

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)
Amazon Data Services, Inc. and Ohio Power)
Company for Approval of a Reasonable)
Arrangement)
Case No. 23-858-EL-AEC

**AMAZON DATA SERVICES, INC.’S MEMORANDUM CONTRA
BUCKEYE POWER INC.’S MOTION TO INTERVENE**

Under Ohio Administrative Code 4901-1-12(B)(A), Amazon Data Services, Inc. (“ADS”) submits this Memorandum Contra Buckeye Power, Inc.’s (“Buckeye”) Motion to Intervene filed on December 4, 2023 in the above-captioned proceeding, in which Ohio Power Company (“AEP Ohio”) and ADS propose a reasonable arrangement under Ohio Adm.Code 4901:1-38-05.

I. INTRODUCTION

Buckeye’s motion fails to satisfy the relevant intervention standard set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, and, therefore, Buckeye should not be granted intervention. Through this proceeding, AEP Ohio and ADS seek a reasonable arrangement under OAC 4901:1-38-05. Buckeye’s claimed purpose for intervention—that the reasonable arrangement may increase transmission costs to Buckeye and its members—is far broader in scope and unrelated to the merits of this proceeding. Instead of identifying any actual interest in the proposed reasonable arrangement or the proposed rates, through its intervention Buckeye seeks to challenge alleged hypothetical wholesale harms related to FERC tariffs that are beyond the bounds of the reasonable arrangement at issue and outside the Commission’s jurisdiction. Accordingly, Buckeye’s intervention will only serve to unduly delay or prolong this proceeding. The Commission should deny Buckeye’s motion to intervene in this proceeding.

II. BUCKEYE FAILS TO MEET THE STANDARD FOR INTERVENTION

A. Intervenors must have a present and immediate interest in the proceeding or have a legal position that directly addresses the merits of the case.

R.C. 4903.221 provides that a person “who may be adversely affected by a public utilities proceeding may intervene in such proceeding.” To intervene, a person must have “a real and substantial interest in the proceeding” and be “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.” Ohio Adm.Code 4901-1-11(A); *see also* R.C. 4903.221 (permitting intervention only by those “adversely affected” by the proceeding). In considering a motion to intervene, the Commission considers:

- (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.
- (5) The extent to which the person’s interest is represented by existing parties.

Ohio Adm.Code 4901-1-11(B).

“[T]he matter of granting or denying a motion to intervene cannot be taken lightly.” *In re Akron Thermal, Ltd. P’ship*, 2004 WL 2831837, Case No. 04-1298-HT-SLF, at *1 (Oct. 25, 2004 Entry). “To meet the requirements of Section 4903.221(B), Revised Code, discussed above, the prospective intervenor must be able to demonstrate that its *present and immediate interests* are affected by the proceeding. *Id.* at *1 (emphasis added). “It would be inappropriate to allow an intervention for an entity that does not demonstrate a present and immediate interest in the

proceeding or have a legal position that directly addresses the merits of this case.” *Id.* Where an intervenor can show neither, intervention should be denied. *See id.* (denying motion to intervene because intervenor did not claim to be a customer of Akron Thermal and did not identify an interest in the merits other than recovering future moneys).

Moreover, “[t]he possibility that a decision in one case may eventually be considered as precedent in another does not give rise to ‘a real and substantial interest’ on the part of [intervenors] who are not directly affected.” *In the Matter of the Application of The Cleveland Electric Illuminating Co.*, 1984 WL 991255, Case No. 83-1343-EL-ATA, at *2 (Feb. 17, 1984 Entry); *see also In re Complaint of Mark. A. Whitt*, Case No. 15-697-EL-CSS, at pp. 3-5 (Nov. 18, 2015 Entry); *In re Ohio Schools Council, et al. v. FirstEnergy Solutions Corp.*, Case No. 14-1182-EL-CSS, at pp. 3-4 (Sep. 4. 2014 Entry).

And the Commission has denied motions to intervene when either the intervenor itself (as compared to its members) does not have interests sufficient to support intervention, is not directly affected by the merits of the proceeding, or has members (like Buckeye here) that are not within the utility’s service territory. *See, e.g., In the Matter of the Application of The Cleveland Electric Illuminating Co.*, 1984 WL 991255, Case No. 83-1343-EL-ATA, at *2 (Feb. 17, 1984 Entry); *In the Matter of the Application of ICG Access Servs., Inc.*, 1996 WL 34608344, Case No. 95-814-TP-ACE, at *5 (Feb. 26, 1996 Entry).

In sum, under Ohio Adm.Code 4901-1-11(A), only a person who demonstrates a real and substantial interest in the proceeding and that the disposition of the proceeding would impair or impede her ability to protect that interest should be permitted to intervene. Buckeye has failed to demonstrate such.

B. Buckeye does not have a direct, real, and substantial interest in this proceeding.

Buckeye has not shown that it meets the Commission’s standard for intervention. First and foremost, Buckeye has not articulated any direct, real, or substantial interest in the outcome of this proceeding. Buckeye is a generation and transmission cooperative.¹ Buckeye has no retail customers. Instead, Buckeye provides power to its member cooperatives.² Those member cooperatives then distribute electricity to their customers—businesses and residences—within their respective cooperative areas in Ohio.³ Moreover, Buckeye does not represent any AEP Ohio retail customers, nor do any of Buckeye’s cooperative members. And neither Buckeye nor its cooperative members pay AEP Ohio’s retail rates. Stated simply, neither Buckeye nor its member cooperatives serve retail customers in AEP Ohio’s service territory.

As a result, Buckeye’s members, and thus Buckeye’s interests, fall outside of AEP Ohio’s territory, and in fact are outside of any Ohio Electric Distribution Utility territory.⁴ Adding to the tenuous and speculative nature of the claimed interest, Buckeye’s member cooperatives set their own rates for their member customers outside of the Commission’s purview and jurisdiction, and without regard to AEP Ohio’s retail rates.⁵ As such, Buckeye does not have any direct, real, or substantial interest in this proceeding, which seeks to establish a reasonable arrangement related to retail electric distribution service for ADS’s new data center campuses in AEP Ohio service territory.

¹ Ohio’s Electric Cooperatives: About Buckeye Power, available at: <https://ohioec.org/about-buckeye-power>.

² *Id.*

³ *Id.*; see also Buckeye’s Motion to Intervene, at 3-4.

⁴ See also R.C. 4905.02(A)(1)-(2) (exempting from the definition of “public utility” any “electric light company that operates its utility not for profit” or is “owned and operated exclusively by and solely for the utility’s customers”).

⁵ Ohio Public Utility Commission: Electric Cooperatives, available at: <https://puco.ohio.gov/utilities/electricity/resources/electric-cooperatives>.

Rather than identify any real, direct interest in the merits of the proceeding, Buckeye instead points to issues related to possible increased wholesale transmission costs subject to PJM's Open Access Transmission Tariffs ("OATT") as an interest validating its intervention. However, this proceeding is about a retail arrangement between ADS and AEP Ohio, not PJM's OATT. Buckeye's theoretical and speculative concerns about alleged wholesale transmission costs is irrelevant to the merits of this retail rate proceeding. *See* Ohio Adm.Code 4901-1-11(B)(2) (the "legal position advanced" must have a "probable relation to the merits of the case"). Moreover, PJM's OATT is subject to the jurisdiction of FERC, not the Commission's jurisdiction. Litigating Buckeye's alleged wholesale transmission concerns will not address the merits of the proposed retail arrangement here, but merely delay these proceedings and needlessly expend the parties' and Commission's time and resources.

Further, Buckeye's transmission cost-shifting concerns are wholly speculative. Buckeye has failed to substantiate any connection between the reasonable arrangement and its alleged interest—increased wholesale transmission costs. Instead, it asks the Commission to postulate about, and the parties to defend, possible future outcomes affecting the wholesale energy markets. At most, Buckeye's motion to intervene illustrates that Buckeye's concerns may, or may not, occur in the future and may only involve potential wholesale market concerns. But such speculation falls far short of demonstrating "a present and immediate interest in the proceeding," and "[i]t would [therefore] be inappropriate to allow an intervention for [Buckeye]." *In re Akron Thermal, Ltd. P'ship*, 2004 WL 2831837, Case No. 04-1298-HT-SLF, at *1 (Oct. 25, 2004).

Finally, the Office of the Ohio Consumers' Counsel is already representing the interests of residential customers in AEP Ohio service territory.

III. CONCLUSION

For the foregoing reasons, Buckeye's Motion to Intervene should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing was served upon the persons listed below by electronic transmission this 19th day of December 2023.

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Dated: December 19, 2023

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Summary: Memorandum Memorandum in Opposition to Buckeye Power, Inc.'s
Motion to Intervene electronically filed by Mr. David F. Proano on behalf of Amazon
Data Services, Inc..