

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO INTERVENE OF THE
ENVIRONMENTAL LAW & POLICY CENTER**

Environmental Law & Policy Center (“ELPC”), pursuant to Section 4903.221 of the Ohio Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, moves for leave to intervene in the above-captioned proceeding. As explained more thoroughly in the attached Memorandum in Support, ELPC has a real and substantial interest in this case, in which the Public Utilities Commission has ordered an expanded audit into the FirstEnergy Utilities’ delivery capital recovery rider costs, including whether ratepayer funds were used in transactions that “were improperly classified, misallocated . . . or lacked supporting documentation.” Entry ¶¶ 6–7. No other party to this matter adequately represents ELPC’s interests, and ELPC’s participation will contribute to a just and expeditious resolution of the issues. Additionally, ELPC’s participation will not unduly delay the proceedings or prejudice any other party.

ELPC respectfully requests that the Commission grant its motion to intervene for these reasons and those set forth in more detail in the attached Memorandum in Support.

Respectfully submitted,

/s/ Caroline Cox
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MEMORANDUM IN SUPPORT

Ohio Revised Code 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. ELPC clearly fits this definition. ELPC is a non-profit environmental advocacy organization whose mission is to improve the Midwest’s environmental quality and economic development. ELPC is an advocate for environmental health, sustainable economic development, and anti-corruption in public utility regulation. As ELPC has intervened and moved for an expansion of the investigation in Case No. 20-1502, the audit proposed in this docket could impact ELPC’s motion in the other proceeding. Additionally, ELPC has an interest in ensuring a thorough and complete anti-corruption investigation, including investigatory steps like the audit in this case.

Ohio Revised Code 4903.221 requires the Commission to consider four factors when presented with a motion to intervene. The Commission must consider:

- (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.

Ohio Rev. Code 4903.221(B). ELPC's motion to intervene meets all of the statutory factors.

With respect to the first factor, ELPC has moved to intervene in the investigation into the FirstEnergy Utilities' political and charitable spending related to House Bill 6 ("HB6") and the subsequent referendum effort. *See* Motion to Intervene by the Environmental Law & Policy Center, *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Co., the Cleveland Elec. Illuminating Co, and the Toledo Edison Co.*, No. 20-1502-EL-UNC (Sept. 18, 2020). In that docket, ELPC has moved with the Ohio Environmental Council to expand the investigation into, among other issues, whether the FirstEnergy Utilities or their parent company were involved in a \$4 million payment to a future PUCO regulator and whether and how the FirstEnergy Utilities were involved in the HB6 scandal. *See* Motion of the Environmental Advocates to Expand the Scope of the Commission's Review into FirstEnergy's Political and Charitable Spending, No. 20-1502-EL-UNC (Jan. 27, 2021). In this proceeding, the Commission has expanded the audit to include an examination of certain "improperly classified, misallocated" or insufficiently supported transactions that were disclosed in the FirstEnergy Corporation's February 1, 2021 10K Report to the SEC. The 10K Report suggests that these transactions are closely tied to the FirstEnergy Corporation's internal investigation into the HB6 scandal. 10K Report at 28. ELPC has an interest in intervening in this docket to ensure that the audit is thorough and addresses the allegations related to HB6.

In addition to our specific interest based on the related investigation, ELPC also has a substantial interest in the audit into the FirstEnergy Utilities' and their parent company's compliance with utility laws and regulations. FirstEnergy Utilities' compliance is essential for a robust deregulated energy market in Ohio. Anticompetitive or corrupt behavior violating these requirements would impact ELPC's interests in economic and clean energy development, which

rely on functioning and fair markets. Additionally, the expansion of this audit and the disclosures in FirstEnergy Corporation's latest annual report suggest close ties to the HB6 scandal. ELPC participated in hearings on HB6 and led legislative education efforts. If the FirstEnergy Utilities or their leadership improperly or unlawfully used money to sway the outcome of the HB6 debate, then they likely undermined ELPC's work to educate legislators. ELPC has also often acted as a watchdog for corruption and malfeasance in the Midwest's energy sector, including the current Exelon bribery scandal in Illinois and litigating against energy groups that fail to meet environmental standards.

As to the second factor, because of the potential impacts on ELPC and its Ohio members, ELPC seeks to ensure the audit fairly and fully addresses whether customer charges under the delivery capital recovery rider went to support vendors tied to HB6 or undermine Ohio's competitive energy market. As a clean energy advocate, ELPC has experience working with public utility commissions to create functioning markets in which clean energy can effectively compete and thrive. Corrupt attempts to short circuit the legislative process may have hindered functioning energy markets at customer expense, and ELPC's perspective from across the Midwest—including other deregulated states—will help create a comprehensive audit.

Under the third factor, ELPC's inclusion will not unduly delay or prolong the proceeding. The Commission announced this expanded audit this month, and the auditing firm has yet to complete its review. ELPC is committed to working within any schedule that is imposed by this Commission to achieve the efficient and orderly disposition of the questions presented in this proceeding.

Finally, ELPC will significantly contribute to the full development and resolution of the proceeding by bringing its unique perspective to bear. ELPC has expertise and experience

throughout the Midwest regarding energy policy that will contribute to resolving the pending issues.

The Commission's procedural rules at Ohio Administrative Code 4901-11-1 similarly provide that the Commission shall consider five factors when weighing a motion to intervene.

ELPC meets the requirements set forth in that section:

- (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; [and]
- (5) The extent to which the person's interest is represented by existing parties.

O.A.C. 4901-11-1. The first four factors mirror those in R.C. 4903.221, and for the reasons stated above, ELPC meets those factors. As to the fifth, ELPC maintains that no other party can adequately represent its interests in protecting its rights in Case No. 20-1502 and as a Midwestern environmental advocacy organization with experience as a watchdog for corruption.

The Commission's rules favor intervention, see *Consumers' Counsel v. Pub. Util. Comm'n*, 111 Ohio St. 3d 384, 388 (2006), and this Commission's policy is to "encourage the broadest possible participation in its proceedings," Entry at 2, *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR (January 14, 1986). ELPC respectfully requests that the Commission embrace this preference for intervention and grant ELPC's motion in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Intervene submitted on behalf of the Environmental Law & Policy Center was served by electronic mail, upon the following Parties of Record on March 22, 2021.

/s/ Caroline Cox
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Summary: Motion to Intervene and Memorandum in Support electronically filed by Ms. Caroline Cox on behalf of Environmental Law and Policy Center