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# CITIZEN POWER

Public Policy Research Education and Advocacy

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November 6, 2009

Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

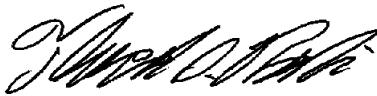
Re: Case No. 09-580-EL-EEC, 09-581-EL-EEC, 09-582-EL-EEC

Dear Docketing Division:

Enclosed please find for filing an original and (10) ten copies of *Citizen Power Incorporated's Reply to the Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company's Memorandum Contra to its Motion to Intervene.*

If you have any questions, please contact me at (412) 421-7029.

Sincerely,



Theodore S. Robinson, Esquire  
Staff Attorney  
Citizen Power  
2121 Murray Avenue  
Pittsburgh, PA 15217

Attachment

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Energy Efficiency and )	
Peak Demand Reduction Program Portfolio )	Case No. 09-580-EL-EEC
Of Ohio Edison Company, The Cleveland )	Case No. 09-581-EL-EEC
Electric Illuminating Company, and The )	Case No. 09-582-EL-EEC
Toledo Edison Company. )	

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CITIZEN POWER INCORPORATED'S REPLY TO THE OHIO EDISON COMPANY,  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO  
EDISON COMPANY'S MEMORANDUM CONTRA TO ITS  
MOTION TO INTERVENE

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Pursuant to Section 4901-1-12(B)(2) and 4901-1-07(B) O.A.C., Citizen Power, Inc. ("Citizen Power") hereby submits this Reply Memorandum in response to The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's ("the Companies") Memorandum Contra ("Memo Contra") to the (1) Motion to Intervene on behalf of the Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, United Clevelanders Against Poverty, Cleveland Housing Network, and The Consumers for Fair Utility Rates, and (2) Motion of Citizen Power, Inc. to Intervene. Specifically, this Reply Memorandum will respond to the Companies' allegations related to Citizen Power's Motion to Intervene.

**I. Introduction**

On October 27<sup>th</sup>, the Companies filed a Memo contra disputing Citizen Power's entry on the grounds that Citizen Power's Motion to Intervene was not timely filed and they failed to meet the standard for intervention under Ohio law. Specifically, the

Companies allege (i) Citizen Power's Motion was not timely filed; (ii) Citizen Power does not have a unique interest in the proceedings not already represented by others; (iii) Citizen Power has not offered any factual or legal arguments not already considered by the Commission; and (iv) intervention of Citizen Power could cause undue delay.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (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 proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

Citizen Power meets the requirements stated in R.C. 4903.221, as discussed in their Motion to Intervene and as further discussed in this Reply to Memorandum Contra Citizen Power's Motion to Intervene.

## **II. Argument**

### **A. Citizen Power's Motion to Intervene was timely filed.**

O.A.C. 4901-1-11(E) states that "A motion to intervene will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission for purposes of a particular proceeding." There has not been a hearing set in this case and a specific deadline for intervention has not been established. Citizen Power filed its Motion seeking leave to

intervene on October 23, 2009, five days before the scheduled oral argument on October 28, 2009. This Motion to Intervene was prompted by the voluntary postponement of the CFL program by the Companies. At that point it was clear that the CFL program could be modified from what the Companies originally proposed in their application.

The Companies contend that the window for intervention closed on September 23, 2009, when the Commission granted the Companies' application. In support of this position they refer to Case No. 03-1966-EL-ATA Entry dated March 25, 2004 at ¶ 11. However, in that case the Commission set an intervention deadline of December 3, 2003. See Case No. 03-1966-EL-ATA, Entry dated November 7, 2003 at ¶ 3(b). Sempra Energy Solutions filed their motion to intervene on March 16, 2004.

**B. Citizen Power has a unique interest in the proceedings not already represented by others.**

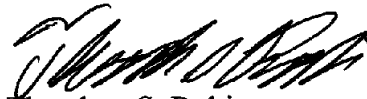
Although Citizen Power does not concede the lawfulness of O.A.C. 4901-1-11(B)(5), we meet this criteria. The Company represented in their Motion Contra that Citizen Power's sole interest in this proceeding is keeping the cost of electricity affordable for low-income customers. However, Citizen Power stated in their Memorandum in Support of their Motion to Intervene that they have a unique interest because they are concerned about the impact of the programs upon both low-income consumer's rates and upon the environment. It is our position as both a consumer advocacy organization and an environmental organization that helps to give us a unique interest in this proceeding.

**C. Intervention of Citizen Power will not cause undue delay.**

In its Motion Contra, the Company stated that the intervention of Citizen Power could delay the October 28, 2009 oral argument. Citizen Power did not delay those arguments and will not delay this proceeding going into the future. It is the goal of Citizen Power to help develop energy efficiency programs that will have as little impact upon rates for low-income customers while maximizing the environmental benefits for everyone.

### **III. Conclusion**

Citizen Power has demonstrated that it has an appropriate interest that is not represented by any other party and that it will not cause undue delay to the proceeding. The interests of Citizen Power should be protected. The Commission should grant Citizen Power's Motion to Intervene.



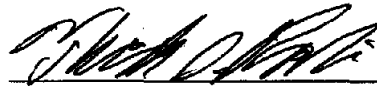
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November 6, 2009

Counsel for Citizen Power

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Memorandum* was served electronically or by regular U.S. Mail upon the parties of record identified below in these cases on this 6<sup>th</sup> day of November, 2009.



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