

FILE

CITIZEN POWER

Public Policy Research Education and Advocacy

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December 4, 2009

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793


Re: Case No. 09-951-EL-EEC, 09-952-EL-EEC, 09-953-EL-EEC

Dear Docketing Division:

Enclosed please find for filing an original and (10) ten copies of the *Motion of Citizen Power, Inc., to Intervene, Memorandum in Support, and Motion to Practice Pro Hac Vice Before the Commission.*

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

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
|--|---|------------------------|
| In the Matter of the Energy Efficiency and |) | |
| Peak Demand Reduction Program |) | Case No. 09-951-EL-EEC |
| Portfolio of Ohio Edison Company, The |) | Case No. 09-952-EL-EEC |
| Cleveland Electric Illuminating Company, |) | Case No. 09-953-EL-EEC |
| and The Toledo Edison Company. |) | |

MOTION OF CITIZEN POWER, INC., TO INTERVENE, MEMORANDUM IN
SUPPORT AND MOTION TO PRACTICE PRO HAC VICE BEFORE
THE COMMISSION

Theodore S. Robinson
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December 4, 2009

Counsel for Citizen Power

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

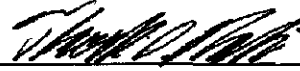
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MOTION TO INTERVENE OF CITIZEN POWER, INC.

Citizen Power, Inc., ("Citizen Power") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission"), pursuant to R.C. 4903.221 and Section 4901-1-11 of the Ohio Administrative Code, to intervene in the above-captioned case, with the full powers and rights granted by the Commission specifically, by statute and by the provisions of the Ohio Administrative Code to intervening parties.

Citizen Power is a not-for-profit research, education and advocacy organization (i.e. under Section 501 (c) (3) of the U. S. Internal Revenue Code), with offices in Ohio and Pennsylvania. A more detailed description of Citizen Power, the reasons for its intervention, and why such intervention should be granted by the Commission are set forth in the Memorandum in Support.

Respectfully submitted,



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**BEFORE
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MEMORANDUM IN SUPPORT

Citizen Power respectfully submits that it should be permitted to intervene in this matter according to R.C. 4903.221 and the Commission's Rules and Regulations contained in Section 4901-1-11 of the Ohio Administrative Code. Moreover, Citizen Power should be permitted to intervene with the full powers and rights granted by the Commission specifically, by statute and by the provisions of the Ohio Administrative Code to intervening parties.

Citizen Power, Inc. is a not-for-profit research, education and advocacy organization (i.e. under Section 501 (c) (3) of the U. S. Internal Revenue Code), with offices in Ohio (at 2424 Dock Road, Madison, Ohio 44057), and Pennsylvania (at 2121 Murray Avenue, Pittsburgh, Pennsylvania 15217). Citizen Power has established an Energy Education Project with the primary mission of promoting energy policies that protect the environment and low-income customers. David Hughes is the Executive Director of Citizen Power, Kelli O'Neill and Ronald O'Connell are Directors of Citizen

Power, and each is a customer of The Cleveland Electric Illuminating Company, an operating company of FirstEnergy.

Citizen Power has a long history of involvement in electric regulatory matters. In the period from 1986 through 1989, Citizen Power, then known as "Concerned Citizens," intervened in the Perry 1 and Beaver Valley 2 investigations concerning the prudence of the construction costs for the two nuclear power plants, and the case concerning the base rates of Cleveland Electric Illuminating Company. Citizen Power also intervened before the FERC in the FirstEnergy merger case (Docket No. ER 97-413). Furthermore, Citizen Power was granted intervention and actively participated in the FirstEnergy Transition Case before this Commission (Case Nos. 99-1212-EL-ETP, 99-1213-EL-ETP, and 99-1214-EL-ETP), the FirstEnergy ESP Case (Case No. 08-935-EL-SSO), and the FirstEnergy MRO Case (08-936-EL-SSO).

Citizen Power has a direct, real, and substantial interest in this proceeding. The above-captioned proceeding concerns an application by The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("the Companies") to count selected transmission and distribution projects toward the Section 4928.66(A)(1)(a) energy efficiency benchmarks. The determination of what projects should count towards the benchmarks and the calculation of how much these projects should count towards the benchmarks will have an impact on how the energy efficiency benchmarks are met. As a non-profit organization dedicated to conserving the environment, promoting energy efficiency, and protecting low-income residential customers; the interests of Citizen Power may be "adversely affected" by these proceedings, satisfying the intervention standard in R.C. 4903.221.

Citizen Power also meets the standard for intervention under R.C. 4903.221(B), which provides that the Commission shall consider in ruling on an intervention application:

- (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.

First, as evidenced above, the nature and extent of Citizen Power's interest in these proceedings are substantial. The determination of what transmission and distribution projects count toward energy efficiency benchmarks and the resultant calculations will have a corresponding impact upon both the environment and how the Companies' energy efficiency portfolio is structured. Second, Citizen Power's legal position includes, but is not limited to; the proposition that the determination of system losses averted by the Companies' projects must be accurately accounted for. Third, the intervention of Citizen Power will not unduly prolong or delay the proceeding. Fourth, Citizen Power will contribute to the just, equitable, and expeditious resolution of the issues that are raised in these proceedings.

Citizen Power also meets the standard for intervention under Section 4901-1-11(B)(1)-(4) of the Ohio Administration Code, which is almost identical to the criteria under R.C. 4903.221(B). Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While Citizen Power does not concede the lawfulness of this factor, Citizen

Power satisfies this criterion in that it is specifically concerned about the environmental impacts of these programs and how these programs affect the overall compliance strategy of the Companies.

For the reasons stated above, Citizen Power requests the Commission grant Citizen Power's motion to intervene.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene, Memorandum in Support* and the attached *Motion to Admit Pro Hac Vice* was served electronically or by regular U.S. Mail upon the parties of record identified below in these cases on this 4th day of December, 2009.



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**MOTION TO ADMIT THEODORE S. ROBINSON TO PRACTICE
PRO HAC VICE BEFORE THE COMMISSION**

I. MOTION FOR ADMISSION PRO HAC VICE

Pursuant to Rule 4901-1-08(B) of the Ohio Administrative Code, William M. Ondrey Gruber (0005950), an attorney licensed to practice in the State of Ohio, respectfully petitions the Public Utilities Commission of Ohio ("Commission") to permit Theodore S. Robinson to practice *pro hac vice* before the Commission in the above-referenced proceedings. Mr. Robinson represents Citizen Power, a non-profit corporation registered in Ohio and Pennsylvania and working for safe, clean and affordable energy.

II. MEMORANDUM IN SUPPORT

Mr. Robinson graduated from the University of Pittsburgh School of Law in May 2006, *cum laude*, and has been an active member of the Pennsylvania Bar since December of 2006, Member No. 203852. Mr. Robinson's representation of Citizen Power includes the support of Citizen Power's activities related to the State of Ohio's

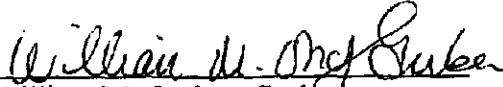
utility services, including those relating to activities that the Commission has jurisdiction over. Mr. Robinson's contact information is:

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III. CONCLUSION

For the reasons set forth above, William M. Ondrey Gruber requests that Theodore S. Robinson be permitted to practice before the Commission in the aforementioned proceedings.

Respectfully submitted,


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