

FILE

FAX

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter Of the Application of Ohio Edison )  
Company, The Cleveland Electric Illuminating ) Case Nos. 10-1265 EL-UNC  
Company and The Toledo Edison Company for )  
Administration of the Significantly Excessive )  
Earnings Test Under Section 4928.143(F), Revised )  
Code, and Rule 4901:1-35-10, Ohio Administrative )  
Code. )

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

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October 8, 2010

Counsel for Citizen Power

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**MOTION TO INTERVENE OF CITIZEN POWER, INC.**

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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

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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 Cases (Case No. 08-935-EL-SSO) and (Case No. 10-388-EL-SSO), and the FirstEnergy MRO Cases (08-936-EL-SSO) and (09-906-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") asking for a determination by the Commission that the Companies did not obtain significantly excessive earnings under their ESP during 2009. Under R.C. 4928.143(F), the Commission must determine whether an electric utility operating under an ESP has generated significantly excessive earnings. This determination will be the basis for whether refunds may be granted to customers. In addition, this Application may have an impact into future years as any methodology used to determine whether there have been significantly excessive earnings may become the standard methodology for future years. As a non-profit organization dedicated to, among other things, promoting the availability of reliable electric service at a reasonable cost 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 result of these proceedings may have a significant impact upon the rates paid by the Companies' customers, including many low-income customers. Second, Citizen Power's legal position is that electric rates should be reasonable and that the process used to determine them should be designed to obtain the lowest possible rates for customers. 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 submits that no current party represents its interests. In addition, it is the stated policy of the Commission to encourage the broadest possible participation in the proceedings before it.

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

Respectfully submitted



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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter Of the Application of Ohio Edison )  
 Company, The Cleveland Electric Illuminating ) Case Nos. 10-1245-EL-UNC  
 Company and The Toledo Edison Company for )  
 Administration of the Significantly Excessive )  
 Earnings Test Under Section 4928.143(F), Revised )  
 Code, and Rule 4901:1-35-10, Ohio Administrative )  
 Code. )

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

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**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



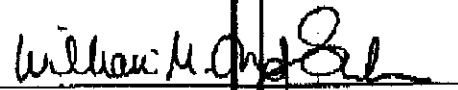
Power includes the support of Citizen Power's activities related to the State of Ohio's utility services, including those relating to activities that the Commission has jurisdiction over. Mr. Robinson's contact information is:

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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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**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 8<sup>th</sup> day of October, 2010.



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*Motion of Citizen Power to Intervene, Memorandum in Support, and Motion to Perpetuate  
Pro Hac Vice -- In the Matter of the Applications of Ohio Edison Company,  
The Cleveland Electric Illuminating Company, and the Toledo Edison Company  
for Administration of Significantly Excessive Earnings Test Under Section 4928.143(F),  
Revised Code, and Rule 4801:1-35-10, Ohio Administrative Code*