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**In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating 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.**

**Case No. 10-1265-EL-UNC**

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## INTRODUCTION

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of serious bargaining among knowledgeable and capable Signatory Parties in a cooperative process and undertaken by the Signatory Parties representing a wide range of interests to resolve the aforementioned issues. For purposes

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of resolving the issues raised by this proceeding, the Signatory Parties stipulate, agree and recommend as set forth below.

### PARTIES

This Stipulation is entered into by and among Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "Companies"), Ohio Partners for Affordable Energy, Ohio Energy Group, Citizen Power, Inc., and the Staff of the Public Utilities Commission of Ohio ("Staff").<sup>1</sup>

### STIPULATION

The returns on equity earned in 2009 by the Companies, as adjusted by specific items contemplated in the stipulations in Case No. 08-935-EL-SSO, were: CEI 5.2%, Ohio Edison 6.2%, and Toledo Edison 3.8%. Using the Commission approved 200 basis point "safe harbor" above the return earned by comparable companies, 2009 returns on equity below the following amounts would not be significantly excessive: CEI 12.49%, Ohio Edison 11.90%, and Toledo Edison 12.32%.

The Signatory Parties stipulate, agree and recommend that the Commission admit the Companies' Application and accompanying materials filed September 1, 2010 into the record of this proceeding and issue its Opinion and Order in this proceeding determining that significantly excessive earnings under Revised Code Section 4928.143(F) did not occur with respect to each of the Companies' ESPs in 2009.

### PROCEDURAL ISSUES

This Stipulation is submitted for purposes of this proceeding only, and is not deemed binding in any other proceeding, nor is it to be offered or relied upon in any other

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<sup>1</sup> The Commission Staff is a party for the purpose of entering into this Stipulation pursuant to O.A.C. 4901-1-10(C).

proceedings, except as necessary to enforce the terms of this Stipulation. The agreement of the Signatory Parties reflected in this document is expressly conditioned upon its acceptance in its entirety and without alteration by the Commission. The Signatory Parties agree that if the Commission or any court of competent jurisdiction rejects all or any material part of this Stipulation, or otherwise materially modifies its terms, any adversely affected Signatory Party shall have the right to file an application for rehearing or a motion for reconsideration. If such application or motion is filed, and if the Commission or court does not, on rehearing or reconsideration, accept the Stipulation without material modification within 45 days of the filing of such motion, then anytime thereafter the adversely affected Signatory Party may terminate its Signatory Party status without penalty or cost and regain its rights as a non-Signatory Party as if it had never executed the Stipulation by filing a notice with the Commission and the other Signatory Parties.

Unless the Signatory Party exercises its right to terminate its Signatory Party status as described above, each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission, and to cause its counsel to do the same, and in any appeal from the Commission's adoption and/or enforcement of this Stipulation. The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof as promptly as possible.

IN WITNESS WHEREOF, this Stipulation has been signed by the authorized agents of the undersigned Parties as of this 3<sup>rd</sup> day of November, 2010. The undersigned Parties respectfully request the Commission to issue its Opinion and Order determining that significantly excessive earnings did not occur with respect to each

of the individual Companies' ESPs in 2009. The Stipulation will be held open for additional interveners and parties to sign on as Signatory Parties until the issuance of an Order by the Commission.

James F. Lang / s/jp per  
Ohio Edison Company telephone  
authorization  
10/29/10

Mike P. Kest  
Ohio Energy Group

James F. Lang / s/jp per  
The Toledo Edison Company telephone  
authorization  
10/29/10

Theodore S. Robinson / s/jp per  
Citizen Power, Inc. telephone authorization  
10/29/10

James F. Lang / s/jp per telephone  
The Cleveland Electric Illuminating  
Company authorization  
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Sarah J. Parrot  
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Commission of Ohio

David C. Ruelbott / s/jp per email  
Ohio Partners for Affordable Energy  
authorization  
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