

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Alternative)
Energy Status Report of Ohio Edison)
Company, The Cleveland Electric)
Illuminating Company and The Toledo)
Edison Company)

Case No. 11-2479-EL-ACP

)
In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo)
Edison Company for a Force Majeure)
Determination for Their In-State Solar)
Resources Benchmark Pursuant to R.C. §)
4828.64(C)(4)(a))

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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June 6, 2011

Counsel for Citizen Power

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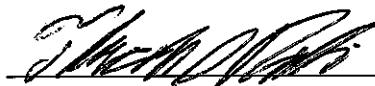
MOTION TO INTERVENE OF CITIZEN POWER, INC.

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,

A handwritten signature in dark ink, appearing to read 'T. S. Robinson', is written over a horizontal line.

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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 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. 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. EC 10-68). 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 Nos. 08-935-EL-SSO and 10-388-EL-SSO), the FirstEnergy MRO Cases (Case Nos. 08-936-EL-SSO and 09-906-EL-SSO) and the FirstEnergy application to include T&D projects to meet their 2009 energy efficiency benchmarks (Case No. 09-951-EL-EEC).

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") for a force majeure determination regarding the Companies' Ohio solar benchmarks. The determination of whether a force majeure determination is granted will have an impact upon the development of renewable resources within Ohio. 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.

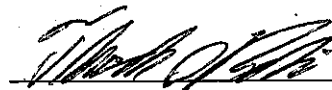
First, as evidenced above, the nature and extent of Citizen Power's interest in these proceedings are substantial. The determination of whether a force majeure determination is granted could have a corresponding impact upon the continuing development of renewable resources in Ohio. Second, Citizen Power's legal position includes, but is not limited to; the proposition that the Companies may not be entitled to a force majeure determination under R.C. 4928.64(C)(4) and O.A.C. 4901:1-40-06. 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 the environmental impacts of a force majeure determination, the development of renewable resources in Ohio, and the economic impacts resulting from the outcome of this docket.

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

Respectfully submitted,



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**MOTION FOR PERMISSION TO APPEAR PRO HAC VICE
OF THEODORE ROBINSON**

Pursuant to Gov.Bar R. XII(2)(A)(6), Theodore Robinson, attorney for Citizen Power, Inc., hereby moves the Public Utilities Commission of Ohio to grant him permission to appear *pro hac vice* in the above-captioned proceeding.

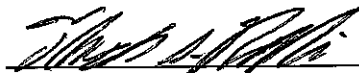
Movant represents that the following is a list of the jurisdictions in which he has ever been licensed to practice law, including dates of admission to practice, resignation, or retirement, and any attorney registration numbers: Pennsylvania (#203852; admission date: December 14, 2006).

Movant represents that he has not been granted permission to appear *pro hac vice* in more than three proceedings before Ohio tribunals in the current calendar year pursuant to Gov.Bar R. XII(2)(A)(5).

William M. Ondrey Gruber (#0005950), an active Ohio attorney in good standing, has agreed to associate with Movant on this case.

The affidavit required by Gov.Bar R. XII(A)(6), a copy of Movant's certificate of *pro hac vice* registration furnished by the Supreme Court of Ohio Office of Attorney Services, and a certificate indicating service of this Motion on all known parties and attorneys of record are attached. Movant understands that, if this Motion is granted, Movant must file a Notice of Permission to Appear *Pro Hac Vice* and a copy of the Order granting permission with the Supreme Court of Ohio Office of Attorney Services within thirty days of the Order.

Respectfully submitted,



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Home Address:
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Pittsburgh, PA 15201

Dated: June 6, 2011

THE SUPREME COURT of OHIO

OFFICE OF ATTORNEY SERVICES

IN THE MATTER OF THE APPLICATION OF

Theodore Robinson (1502-2011)

AFFIDAVIT OF APPLICANT

Gov. Bar R. XII, Section 2(A)(3)

FOR PRO HAC VICE REGISTRATION

State of Pennsylvania

County of Allegheny

SS:

Theodore Scott Robinson, being first duly cautioned, swears or affirms as follows:

- a. I have never been disbarred from the practice of law.
- b. I have been admitted to the practice of law in the following jurisdiction(s)
Pennsylvania
- c. Choose one:
☒ I am not currently suspended from the practice of law in any jurisdiction where I have been admitted to practice.
☐ I am currently suspended from the practice of law in the following jurisdiction(s):

- d. Choose one:
☒ I have not resigned from the practice of law with discipline pending in any jurisdiction where I have been admitted to practice.
☐ I have resigned from the practice of law with discipline pending in the following jurisdiction(s):

SIGNATURE OF APPLICANT:

Theodore Scott Robinson

Sworn to or affirmed before me and subscribed in my presence the 5th

day of May, 20 11

Adele Vamos

NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Adele Vamos, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Oct. 23, 2012
Member, Pennsylvania Association of Notaries

THE SUPREME COURT *of* OHIO

OFFICE OF ATTORNEY SERVICES

IN THE MATTER OF THE APPLICATION OF

Theodore Robinson

FOR PRO HAC VICE REGISTRATION

per Gov. Bar R. XII, Section 2(A)(3)

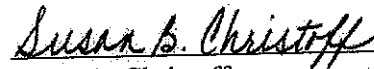
Certificate of
PRO HAC VICE
REGISTRATION

2011

Registration Number:
PHV- 1502-2011

Theodore Robinson, having met the requirements of, and found to be in full compliance with, Section 2(A)(3) of Rule XII of the Rules for the Government of the Bar of Ohio, is hereby issued this certificate of pro hac vice registration in the state of Ohio.

To receive permission to appear pro hac vice in an Ohio proceeding, a motion requesting such permission must be filed with the tribunal in accordance with Section 2(A)(6) of Rule XII of the Rules for the Government of the Bar of Ohio.



Susan B. Christoff
Director, Attorney Services

Expires December 31, 2011

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 6th day of June, 2011.



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in

Case No(s). 11-2479-EL-ACP

Summary: Motion Motion of Citizen Power, Inc. to Intervene, Memorandum in Support and Motion to Practice Pro Hac Vice Before the Commission electronically filed by Mr. Theodore Robinson on behalf of Citizen Power, Inc.