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Case Nos. 07-796-EL-ATA and 07-797-EL-AAM

Accompanying this cover sheet is the Reply of Citizen Power to the Memo Contra of the Applicant.

Please file the Reply. The original and copies will be delivered the next business day.

Bill Gruber

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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 Company and The Toledo Edison Company for Approval of a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism and Phase-in, and Tariffs for Generation Service.	)))))))	Case No. 07-796-EL-ATM Case No. 07-797-EL-AAM

Citizen Power's Reply to the Companies' Memorandum Contra Motion to Intervene

Citizen Power hereby respectfully replies in opposition to the August 23, 2007 "Memorandum Contra Citizen Power's Motion to Intervene" filed by the Applicant Companies.[1] The Commission should reject the request of the Companies to single out Citizen Power in the Companies' attempt to determine which parties have the right to comment upon their application and participate in this proceeding.

The Companies apparently believe that they have the power or right to determine which parties are worthy of participating in a proceeding initiated by them; and of course they have neither. This is the inescapable conclusion considering the lack of any logic or consistency in the Companies' position on intervention. There is no logical basis for opposing Citizen Power and not opposing one or more of the several parties representing large commercial and industrial customers, or one or more of the marketers. Nor do the Companies state any basis why Citizen Power should not represent environmental issues or low-income consumers rather than some other party. Thus, it appears that their selective opposition to Citizen Power must be motivated

[1] By the Attorney Examiner Entry of August 31, 2007 in this case, Citizen Power was granted an extension of time to file this reply until September 14, 2007.

by personal animus against the organization rather than it does to helping the Commission manage this proceeding in an appropriate, fair and just manner.

As of the time this reply is being prepared, twenty one parties have moved to intervene in this case, and Citizen Power is the only party thus far that the Companies have decided is not worthy to be involved. The Companies' opposition to Citizen Power is based on what appears to be an intentional misstatement of its Motion to Intervene, and what boils down to the claim that Citizen Power's interests are represented by other parties. Again this latter claim indicates the Companies' apparent belief that it, not the Commission, should determine which parties should be permitted to represent which interests, particularly where it may appear that several parties have overlapping, though not identical, areas of interest and concern. This position of the Companies is akin to them opposing the intervention of the Industrial Energy Consumers (IEU) because the OMA has intervened.

It is noteworthy, that the Companies have never objected to Citizen Power's participation in proceedings before this Commission, yet Citizen Power remains consistent in raising concerns that are relevant to this proceeding. The Companies may not want another party representing the interests of low-income and small commercial customers to be involved here, but if there are any overlapping interests and concerns among these consumer parties, then they simply balance the multiple and much more powerful and well-armed parties already representing other interests. There are already seven electricity suppliers and five parties representing large commercial and industrial customers that have intervened; without opposition from the Companies, of course. The intervention of multiple parties representing different aspects of residential and small commercial customer, as well as environmental interests is, therefore, a fair and just balancing of interests and input which will aid the Commission in resolving this case.

One of the Companies' specific claims, which is based on a misstatement of Citizen Power's Motion to Intervene, is that Citizen Power supposedly has identified no discernible interest or group because Citizen Power's office is not a customer of any of the Companies for electric service. It is interesting that the Companies have nothing better to do than to check on the customer status of Citizen Power's office. It is true that the office is not a customer of applicant Cleveland Electric Illuminating Company ("CEI"), which is due to the fact that it is located in donated office space, though that space is located in CEI territory. But Citizen Power's Motion to Intervene does not claim that its Ohio office is a customer, rather it states that the Trustees of Citizen Power are customers of CEI. In addition, the Director of Citizen Power is a customer of CEI.

Although no other party has been required to present the personal addresses of its board members and director in order to provide direct evidence to prove its "discernible interest" as customers of the CEI, the addresses of Citizen Power's Trustees and Director as customers of CEI are as follows:

Ron O'Connell	Kelli O'Neill	David Hughes
774 Geneva Windsor Rd.	2424 Dock Rd.	7394 Bank St.
Harpersfield, OH 44041	Madison, OH 44057	Madison, OH 44057

Thus, Citizen Power meets the standard of having a direct interest in this proceeding, pursuant to Section 4903.221 (B) Ohio Revised Code, and Section 4901-1-11 (B) (5) O.A.C.

The Companies also claim that Citizen Power fails to satisfy Section 4903.221 O.R.C. and Section 4901-1-11 O.A.C., ostensibly because Citizen Power's interests in utility matters are so broad that they extend beyond the subject of this proceeding. Interestingly, however, the Companies do not claim that Citizen Power's interests do not include the subject of this proceeding, only that they also extend beyond it. Nevertheless, Citizen Power's interests, as

stated very clearly in its Motion to Intervene, have an interest in the subject matter of this proceeding and of the outcome of the proceeding.

Citizen Power is a not-for-profit energy research, education and advocacy organization (i.e. under Section 501(c)(3) of the U. S. Internal Revenue Code), certified by the Ohio Department of State to do business in Ohio, 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 Electric Restructuring Education Project with the primary mission of promoting the development of safe, clean, and affordable energy sources, as well as the efficient use of energy.

Citizen Power's involvement in multiple proceedings before this Commission, including in the restructuring case of the Companies, is described in Citizen Power's Motion to Intervene, in part, because it evidences Citizen Power's long track record of representation of low-income and small commercial customers, including the interests of such customers on environmental issues related to electricity production and distribution. It also evidences Citizen Power's interests on particular issues related to this proceeding.[2]

Citizen Power's longstanding active involvement in the Companies' electric restructuring case is also relevant because this case is a continuation of the restructuring process. The original case established the Market Development Period. When that period ended with no effective competitive market an auction was attempted, unsuccessfully, and the Rate Stabilization Plan

[2] The Companies raise a "straw man" claiming that Citizen Power described its long and multiple experiences before the Commission because it was claiming that past unopposed interventions automatically give a party a future right to intervene. Of course, Citizen Power made no such claim in its Motion to Intervene. But that does not mean, as exemplified in the text above, that Citizen Power's long, unopposed, and constructive involvement, particularly in the Companies' proceedings related to its restructuring, is entirely irrelevant as to why it should be allowed to intervene here. Clearly, Citizen Power has shown by its past involvement that its participation can assist the Commission in making its ultimate determination, and that its intervention will not delay, prolong or in any way disrupt the orderly conduct of this case.

was then approved. Now the Companies want to try again to establish a market based standard service generation offer. Citizen Power fought for several issues in the original restructuring proceeding that few others advocated; issues on which Citizen Power's position has proven correct.

Although not all of these issues may be specifically in front of the Commission in this case, Citizen Power's history of advocacy on behalf of customers and the environment in the restructuring proceedings evidences the nature and extent of Citizen Power's interest in this proceeding and the contribution it will make to the full development and equitable resolution of the issues here. Moreover, Citizen Power's role is different from other consumer parties in that Citizen Power believes that deregulation is not working, and thus it will be looking at the Companies' proposals and other parties' positions from the perspective that any competitive bidding process must prove itself as substituting sufficiently for the prior regulatory process to protect consumers from excessive rates. Finally, while it may be technically allowable to do so, there is no reasonable basis for the Companies to object now to Citizen Power's involvement, and no reason why Citizen Power would now suddenly not qualify as an intervener, when it had in the earlier iterations of this proceeding.

Citizen Power has consistently raised concerns about the restructuring of the Companies and whether it is being implemented in a manner consistent with State law and with the interests of consumers, in order to protect consumers from excessive rates and environmental degradation, and to ensure fairness in rate distribution and the furtherance of goals for energy efficiency. Citizen Power has an interest in monitoring and having input on the form and method of the Companies' competitive bidding process in this case in order to further and protect these interests.

In addition, Citizen Power has an established track record of advocacy to ensure against market power, including in the FirstEnergy restructuring proceeding. In this case, Citizen Power is concerned that because FirstEnergy has market power, the Commission should focus on whether the competitive bidding process proposals address that concern. If they do not, customers will not be guaranteed a competitively priced supply. Citizen Power will advocate here for the Companies to be required to provide sufficient information to justify approval of their proposals, and that if their proposal is approved, that it result in reliable and reasonably priced electricity service .

Finally, the Companies claim that Citizen Power should not be allowed to intervene here because the interests Citizen Power "purports to represent" are already represented by other interveners. As noted in the Motion to Intervene of the Ohio Consumers' Counsel, the Commission's consideration of the extent to which a party's interests are represented by existing parties is a consideration set forth in the Commission's rules, not in the statutory standard for intervention set forth in Section 4903.221 O.R.C. Furthermore, as noted above, the Commission may and should consider the extent to which various interests are represented in this proceeding, and whether multiple parties representing similar or overlapping interests will ensure a balanced and fair proceeding.

Nonetheless, considering Citizen Power's particular interests and experience, the interests it represents are not represented by any other party. The Companies reference the Ohio Consumers' Counsel ("OCC") as representing the same interests as Citizen Power. Yet OCC represents the interests of all residential consumers generally, and has taken very clear and public positions in favor of deregulation. Although Citizen Power greatly respects OCC's involvement in the Companies' cases, and its expertise and efforts in representing residential consumers,

Citizen Power has taken distinctly different positions than has OCC in cases related to and in furtherance of electricity restructuring. In addition, as described below, Citizen Power has very clear environmental concerns and experience that provide a very different emphasis on issues from OCC.

Another intervener mentioned by the Companies as representing the same interests as Citizen Power is the Ohio Partners for Affordable Energy ("OPAE"), another organization that Citizen Power respects and admires. However, OPAE does not directly represent individual low income customers, rather it represents not for profit organizations providing energy efficiency and weatherization assistance to low income customers, as well as community action agencies. While OPAE's positions and those of Citizen Power may both help low income customers, the two parties come from two different perspectives.

Finally, the Companies also mention the Ohio Environmental Council ("OEC"), with which Citizen Power does share a number of common interests. However, OEC does not mention any opposition to nuclear energy as a source of purchase power in its Motion to Intervene, nor does it specifically mention renewable energy options for consumers as an issue it plans to focus upon. These are very important, longstanding issues for Citizen Power. Moreover, OEC, while it has many individual members, is an organization made up of a number of other environmental advocacy organizations. Citizen Power, however, is not a member of OEC.

As to the other criteria for intervention, in their attack against Citizen Power the Companies make no claim that Citizen Power's intervention would not contribute to the "full development and equitable resolution of the factual issues" in the case or that its involvement would "unduly prolong or delay the proceeding." Thus, the Commission should find that these criteria have been met by Citizen Power.

Wherefore, Citizen Power requests that the Commission reject the Companies' attempt to selectively determine which parties may participate in this important proceeding, and that the Commission grant Citizen Power's Motion to Intervene.

Respectfully submitted,

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September 14, 2007

Attorney for Citizen Power

Certificate of Service

I certify that a copy of this Reply has been sent to the Applicant and all Intervenors by regular U. S. mail the 14th day of September, 2007.

William M. Ondrey Gruber