

FAX**CITIZEN POWER***Public Policy Research Education and Advocacy*

July 1, 2009

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

Re: Case No. 09-384-EL-EEC, 09-385-EL-EEC, 09-386-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)	Case No. 09-384-EL-EEC
and Peak Demand Reduction Program)	09-385-EL-EEC
Portfolio of Ohio Edison Company,)	09-386-EL-EEC
The Cleveland Electric Illuminating)	
Company, 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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July 1, 2009

Counsel for Citizen Power

**BEFORE
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Company.)	

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 these matters 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 at the Commission 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 will directly affect how FirstEnergy satisfies certain energy efficiency requirements that resulted from enactment of S.B. 221. As part of its mission, Citizen Power has advocated for clean and affordable energy in multiple regulatory and legal proceedings. Thus, 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. As an advocate for the cleaner use of energy, Citizen Power has a specific interest that this proceeding holds FirstEnergy to specific energy efficiency requirements. Second, Citizen Power's legal positions include, but are not limited to, the proposition that past measures taken by a utility before SB 221 was enacted should not be counted towards fulfilling energy efficiency requirements. Third, since the proceeding has just started, granting Citizen Power's motion to intervene 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 both environmental impacts and that FirstEnergy's proposals to satisfy certain energy efficiency requirements may reduce the opportunity for implementation of needed energy efficiency programs aimed at low-income customers.

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 and Memorandum of 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 1st day of July, 2009.


Theodore S. Robinson, Esq.

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Attorney for the OEC

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

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.

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.

Wherefore, 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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