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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of an Application for the Approval of)
a Corporate Separation Plan Section 4928.17 and) Case No. 09-462-EL-UNC
4901:1-37, Ohio Administrative Code)

**NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S
MOTION FOR LEAVE TO INTERVENE, INITIAL COMMENTS,
AND REQUEST FOR PROCEDURAL SCHEDULE AND HEARING**

Pursuant to Ohio Rev. Code § 4903.221, the Northeast Ohio Public Energy Council ("NOPEC") respectfully requests that the Public Utilities Commission of Ohio grant NOPEC's motion to intervene in this proceeding. Further, pursuant to Ohio Rev. Code § 4928.17, NOPEC hereby files initial comments to the application, as filed, and requests the Commission establish a procedural schedule and hearing as provided for in Ohio Rev. Code § 4928.17(B) to ensure the application satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power. The reasons supporting NOPEC's intervention are contained in the accompanying Memorandum in Support.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Glenn S. Krassen", written over a horizontal line.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Effective corporate separation, in compliance with the requirements of Ohio Rev. Code § 4928.17 and the Commission's rules, is critical to the continuing development of a viable competitive retail electric service marketplace in Ohio. The importance of meaningful corporate separation becomes especially highlighted when the electric utility's unregulated affiliate engages in extensive marketing in its affiliated incumbent EDUs' service territories.

On June 1, 2009, Ohio Edison Company's ("OE"), The Cleveland Electric Illuminating Company's ("CEI"), and The Toledo Edison Company's ("TE" and collectively the "Companies") filed their Corporate Separation Plan ("CSP") application, as required by the Commission in Case No. 08-777-EL-ORD.¹ The Northeast Ohio Public Energy Council ("NOPEC") hereby requests intervention and the full due process provided by Ohio law and the Commission's rules, including a hearing, in order to ensure that deficiencies contained in the Companies' CSP application are fully remedied in accordance with the policies set forth in Ohio Rev. Code § 4928.02, the express requirements of Ohio Rev. Code § 4928.17, and the Commission's rules.

¹ Case No. 08-777-EL-ORD (Sept. 17, 2008), *Commission Finding and Order*, at 6-7. (requiring the Companies to file an updated CSP Application within 60 days of the effective date of the 08-777 Rules. The Commission rejected FirstEnergy's subsequent request for 180 days from the Rules' effective date to file its CSP Application, which was denied by the Commission in its February 11, 2009 Entry on Rehearing in Case No. 08-777-EL-ORD.)

II. REQUEST FOR INTERVENTION

As set forth below, NOPEC satisfies the requirements for intervention in proceedings before the Commission, and the Commission should grant NOPEC's intervention in this case pursuant to Ohio Rev. Code § 4903.221 and Ohio Admin. Code § 4901-1-11.

NOPEC is a regional council of governments established under Chapter 167 of the Ohio Revised Code. NOPEC is comprised of 128 member counties, municipalities and townships in nine counties in Northeastern Ohio. NOPEC is a political subdivision of the State of Ohio, and a governmental aggregator certified by this Commission to provide both electricity and natural gas services. NOPEC is the largest public retail energy aggregator in the State and the nation.

In an effort to provide the benefits of competitive retail electric service ("CRES") to its member communities, as contemplated by SB 221, NOPEC entered into a full requirements contract for its member communities' electric load with Gexa Energy Ohio, LLC, a CRES provider certified by this Commission, a subsidiary of NextEra Energy and part of FPL Group, Inc. The contract is for a period of approximately 22 months, and provides customers with a material discount compared to the Companies' standard service offer. Pursuant to Ohio Rev. Code § 4928.20 and the Commission's rules, NOPEC has completed its governmental aggregation opt-out process and is enrolling approximately 425,000 electric NOPEC customers located in OE's and CEI's service territories in its governmental aggregation program.

During NOPEC's opt-out process, NOPEC has faced direct competition with the Companies' competitive generation affiliate, FirstEnergy Solutions ("FES"), to serve customers within NOPEC's member communities. NOPEC has serious concerns about FES's marketing practices to solicit prospective NOPEC customers including FES's relationship with the Companies in violation of the Commission's rules. NOPEC also is concerned about other

practices by the Companies and FES that should be addressed by the Commission in this corporate separation case, including, for example, the transfer of numerous employees of the Companies to FES in 2009, providing FES with competitive advantages that other CRES providers can not duplicate. Competition by FES directly impacts NOPEC. Unfair and legally problematic marketing solicitations to prospective NOPEC customers are not only injurious to NOPEC's interests but, importantly, are injurious to the prospect of a functioning retail competitive market in Ohio.

NOPEC meets the standards for intervention in Commission proceedings set forth in Ohio Rev. Code 4903.221 as well as Ohio Admin. Code Rule 4901-1-11.²

As required by Section 4903.221, NOPEC is a party that may be adversely affected by this proceeding. As a large-scale governmental aggregator whose member communities are located within OE's and CEI's service territories, the Companies must work cooperatively with NOPEC to facilitate the proper functioning of NOPEC's governmental aggregation program.³ Meanwhile, FES has become a direct competitor of NOPEC's aggregation program. NOPEC provides information to the Companies regarding its customers and its program, and the Companies are to assist in NOPEC's opt-out process as required by Commission rules. At the same time, FES has sought to serve the same individual customers in governmental aggregation communities served by NOPEC. NOPEC's interest will be injured if the Commission approves the Companies' application, as proposed, as it fails to provide for meaningful effective corporate separation between the Companies and FES, and fails to protect against undue preference or advantage currently flowing from the Companies to FES.

² Similarly, as required by Ohio Rev. Code § 4928.17(B), NOPEC is also a party "having a real and substantial interest in the [Companies'] corporate separation plan . . ."

³ See Ohio Admin. Code Rule 4901:1-10-32(A).

NOPEC also meets the criteria for intervention set forth in Ohio Rev. Code. 4903.221(B), which require the PUCO, in ruling on motions to intervene, to consider the following:

- (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, the nature and extent of NOPEC's interest warrants granting NOPEC intervention.⁴ NOPEC is a political subdivision of the State of Ohio and the largest governmental energy aggregator in the State. NOPEC's interest in this proceeding relates to ensuring that effective corporate separation, as required by Ohio law and the Commission's Rules, is established between the Companies and their competitive affiliate, thereby ensuring that FES is not provided a competitive advantage or undue preference over NOPEC or other competitors solely because of corporate affiliation. NOPEC's interest in this case relates to ensuring that the Companies implement a CSP that creates competitive equality, prevents unfair competitive advantage to FES, and prohibits the potential abuse of market power.

The second statutory standard is the prospective intervenor's "legal position" and "its probable relation to the merits of the case."⁵ As noted above, NOPEC's legal position is as a large-scale governmental aggregator which must coordinate its aggregation program with the Companies and compete with their competitive affiliate for customers. Specifically, NOPEC has

⁴ Ohio Rev. Code § 4903.221(B)(1).

⁵ Ohio Rev. Code § 4903.221(B)(2).

a real and substantial interest in ensuring the Companies' CSP fully satisfies the policies and objectives set forth in Ohio Rev. Code § 4928.02 and § 4928.17. As filed, NOPEC submits that the application fails to do so. These positions are directly relevant and material to the merits of the case.

The third statutory standard is whether the "prospective intervenor will unduly prolong or delay the proceeding."⁶ NOPEC's intervention will not prolong or delay this proceeding, but would seek relevant discoverable information and provide specific objections and responses to the proposed CSP as provided for in Ohio Rev. Code § 4928.17(B). NOPEC's participation will contribute to the Commission's review of the Companies' application.

The fourth statutory standard is whether the "prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues."⁷ NOPEC's active participation in FirstEnergy's recent electric security plan case, Case No. 08-935-EL-SSO, and its experience during the recent opt-out process will contribute to the development of a more complete understanding of the meaning and impacts of the application on large-scale governmental aggregations, consumers, and other competitive suppliers as well as, more generally, the continued development of retail competition in the Companies' service territories. NOPEC was previously granted intervention and participated actively in the Operating Companies' recent SSO cases filed under Senate Bill 221, Case No. 08-935-EL-SSO and Case No. 08-936-EL-SSO.

⁶ Ohio Rev. Code § 4903.221(B)(3).

⁷ Ohio Rev. Code § 4903.221(B)(4).

NOPEC also meets the standards for intervention under the PUCO's rules of practice and procedure.⁸ NOPEC satisfies the elements of O.A.C. 4901-1-11 for intervention based on the above explanation for meeting the statutory standards. As shown above, NOPEC has a "real and substantial interest in the proceeding . . .," given its aggregation services customers in OE and CEI service territories.⁹ NOPEC's interest is not adequately represented by existing parties as only the Ohio Consumer's Counsel ("OCC") and the Ohio Energy Group have requested intervention at this time, and no party has been granted intervention by the Commission in the case.

NOPEC has explained the "nature" of its interest.¹⁰ No parties that represent NOPEC's interests are intervenors in the case.¹¹

NOPEC will significantly contribute to this important proceeding by providing specific objections and responses to the Companies' Application, as provided for in Ohio Rev. Code 4928.17(B), and will not unduly prolong or delay the proceeding as NOPEC has a sincere interest in an effective CSP being approved by the Commission at its earliest opportunity. NOPEC also has shown that it satisfies the next criterion in the rules - that NOPEC will contribute to a just and expeditious resolution of the issues.¹²

Finally, NOPEC's intervention would not unduly delay or unjustly prejudice any party.¹³ NOPEC has explained that it will not unduly delay the proceeding. Further, NOPEC has not

⁸ Ohio Admin. Code Rule 4901-1-11.

⁹ Ohio Admin. Code Rule 4901-1-11(A)(2).

¹⁰ Ohio Admin. Code Rule 4901-1-119B)(1).

¹¹ Ohio Admin. Code Rule 4901-1-11(B)(2).

¹² Ohio Admin. Code Rule 4901-1-119(B)(4).

¹³ Ohio Admin. Code Rule 4901-1-11(B)(2).

proposed anything that would unjustly prejudice a party. NOPEC itself is among those potentially prejudiced by the application in this proceeding.

Based on the foregoing, NOPEC respectfully requests the Commission grant its Motion to Intervene in this proceeding.

III. INITIAL COMMENTS IN RESPONSE TO CSP APPLICATION¹⁴

A. The Critical Importance of this CSP Proceeding to the Regulatory Scheme.

As noted in the Companies' CSP Application, a review of Ohio's recent history of electric utility regulation helps put this pending CSP Application in perspective. From NOPEC's perspective, substantive review of this application is critically important if there is to be effective retail electric competition in northern Ohio over the long-term.

In 1999, the Companies were required to establish a CSP in order to comply with Ohio Rev. Code 4928.17, which had been enacted as part of Amended Substitute Senate Bill 3's ("SB 3") restructuring of Ohio's electric utility industry. The Companies initially filed an "interim" CSP as part of their Electric Transition Plan ("ETP") Application in Case No. 99-1212-EL-ETP. The interim nature of the CSP Application was due to the statutorily mandated but complicated task of structurally untangling the Companies' corporate and financial interrelationships. At that time, as Ohio's restructuring journey towards a competitive retail electric marketplace was only beginning, structural separation was a key initial issue raised by numerous parties in the case. After substantial testimony by the Companies and intervening parties, Commission Staff review,

¹⁴ While NOPEC recognizes that the Commission has not expressly provided for comments in this proceeding, as discussed below, Ohio Rev. Code § 4928.17 contemplates that any party may request an amendment to an electric utility's CSP application and expressly provides for any person having a real and substantial interest in a CSP application to file specific objections. NOPEC submits these initial comments to assist the Commission in its review of the Companies' CSP application and, further, to request the full due process provided by Ohio law and the Commission's rules. NOPEC, of course, reserves its rights to assert additional comments during the course of this proceeding.

completion of an evidentiary hearing, and stipulation of negotiated modifications to the ETP application, the Commission reviewed and approved the Companies' ETP, specifically including its CSP and request for certain waivers.¹⁵ The Commission's review of the Companies' CSP Application was considered and approved as part of the Companies' ETP case stipulation. Unfortunately, the comprehensive review necessary to ensure the Companies developed a plan that prospectively achieved the corporate separation required was limited by the CSP Application's inclusion in the Companies' overarching ETP case – meaning it was one aspect of the Commission's much larger decision. The Companies have been operating under this “interim” CSP for over nine years since it was approved by the Commission in 2000.¹⁶

From 2000 through 2008, retail competition evolved in the Companies' service territories under the SB 3 market development regulatory scheme, but suffice to say this process did not proceed to a fully competitive marketplace as initially contemplated in SB 3.

On July 31, 2008, Ohio commenced a new chapter of electric utility regulation under Amended Substitute Senate Bill 221 (“SB 221”). Senate Bill 221 significantly modified SB 3's standard service offer requirements and its corporate separation requirements, and provided the Commission with an opportunity to revisit its CSP rules in Case No. 08-777-EL-ORD.

As required by Senate Bill 221, the Companies sought approval of their Electric Security Plan (“ESP”) or, alternatively, Market Rate Offer (“MRO”) application for service to commence January 1, 2009. Due to the contemporaneous rulemaking process proceeding in Case No. 08-777-EL-ORD, which included new Chapter 4901:1-37 addressing electric utility corporate

¹⁵ See Case No. 99-1212-EL-ETP (July 19, 2000), *Opinion and Order*, at 26 (noting the Commission “find[s] FirstEnergy has constructed its interim plan in a manner that achieves, to the extent reasonably practical, the structural separation contemplated by Section 4928.17(A)(1), Revised Code, and the corresponding Commission rules . . . However, the Commission reserves the right to invoke its authority to preserve fair competition, for both interim and permanent arrangements.” (emphasis added))

¹⁶ See Application, at 3.

separation between affiliated entities, a CSP was not included in the Companies' ESP and MRO Applications. While the recent history of the Companies' ESP case is well known and fully set forth in the Commission's Case No. 08-935-EL-SSO docket, the Commission's resolution of this case has effectively eliminated a number of prior and proposed barriers to competition that previously impeded CRES providers and large-scale governmental aggregations, like NOPEC, from competing with the Companies' SSO. Thus far, the Commission's implementation of SB 221 generally seems to be achieving the policy goals set forth in Ohio Rev. Code § 4928.02 in the Companies' service territories.

Looking to the future, however, the development of a competitively neutral playing field between the Companies' SSO, its affiliate, and CRES providers necessitates an uber thorough review of the Companies' CSP Application to ensure it fully achieves the policies and directives set forth in Ohio Rev. Code § 4928.02, the express requirements of Ohio Rev. Code § 4928.17, and the Commission's rules. This time around, the Commission can focus on strengthening the Companies' CSP without the pressure of also considering a comprehensive ESP application. Further, unlike the Commission's last review in 2000 of a CSP Application when structural separation itself was still in process for the Companies in the context of a complex ETP proceeding, the Commission now has the opportunity to take the next step to ensure the details of an approved CSP fully "satisfy the public interest in preventing unfair competitive advantage and preventing the abuse of market power."¹⁷

Through NOPEC's intervention and participation in this case, NOPEC intends to inform the Commission's review, modification, and eventual approval of an effective CSP.

¹⁷ Ohio Rev. Code § 4928.17(A)(2).

B. The Law Governing Corporate Separation Plan Requirements.

As noted above, Ohio Rev. Code 4928.17 establishes the CSP requirements that every electric utility in the state must implement and operate under in order to comply with Ohio law.¹⁸ Section 4928.17(A)(1) requires the CSP to, at minimum, provide for CRES through a fully separated affiliate of the utility, establish separate accounting requirements, assert how the electric utility will comply with the code of conduct requirements established by the Commission's Rules, and such other measures as are necessary to effectuate the State's policies specified in Ohio Rev. Code 4928.02.

For the Commission to approve a CSP application, the Application must satisfy the public interest by preventing unfair competitive advantage to an electric utility's competitive affiliate and preventing the abuse of market power and must provide for ongoing compliance with the policies set forth in Ohio Rev. Code §4928.02.¹⁹ In so doing, the CSP must be

. . . sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service, including, but not limited to, utility resources such as trucks, tools, office equipment, office space, supplies, customer and marketing information, advertising, billing and mailing systems, personnel, and training, without compensation based upon fully loaded embedded costs charged to the affiliate; and to ensure that any such affiliate, division, or part will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service. No such utility, affiliate, division, or part shall extend such undue preference.²⁰ (Emphasis added)

Procedurally, the Commission may choose to modify or disapprove a CSP application and may order as it considers necessary the filing of an amended corporate separation plan to reflect

¹⁸ Ohio Rev. Code § 4928.17(A).

¹⁹ Ohio Rev. Code § 4928.17(C); (A)(2).

²⁰ Ohio Rev. Code § 4928.17(A)(3).

changed circumstances.²¹ Any party may seek an amendment to a CSP, and any party having a real and substantial interest may also file specific objections to a CSP, which the Commission shall address in its final order.²²

As noted above, under its authority set forth in Ohio Rev. Code § 4928.17, the Commission adopted rules in Case No. 08-777-EL-ORD establishing new Chapter 4901:1-37 to govern electric utility corporate separation between affiliated entities. These rules are now effective, and must be fully complied with by an electric utility for a CSP application to be approvable under Ohio Rev. Code § 4928.17.

The Commission's rules expand on the policies and add substantive detail to the requirements set forth in Ohio Rev. Code § 4928.17. Specifically, Ohio Admin. Code Rule 4901:1-37-04 sets forth the general provisions, requirements, and prohibitions that the electric utility's CSP must comply with, while Rule 4901:1-37-05 sets forth the requisite application requirements for filing a CSP for approval with the Commission. The Companies have the burden of proof to demonstrate compliance with the requirements of the Commission's rules.²³

As shown below, the Companies' CSP application materially fails to comply with the requirements of Ohio Rev. Code § 4928.17, and the Commission's implementing rules.

Therefore, the Commission should establish a procedural schedule in this case and order a hearing to provide NOPEC and other intervenors an opportunity to fully participate in this proceeding and to provide the Commission with specific objections and proposed

²¹ Ohio Rev. Code § 4928.17(B); (D).

²² *Id.*

²³ See Ohio Admin. Code 4901:1-37-02.

modifications to the CSP in order to ensure compliance with Ohio Rev. Code § 4928.17 and the Commission's Rules.

C. The Companies' Application as a whole is deficient, as it does little more than recite the Commission's rules and assert that the Companies will comply with little attention to specific and measurable programs, processes, and controls for the Commission's review.

The Companies' CSP application, as a whole, is materially deficient and insufficient to comply with the requirements of Ohio Rev. Code § 4928.17, and the Commission's Rules. Essentially, the Companies' application starts from the premise that the Companies have complied with Ohio Rev. Code § 4928.17 because they have achieved structural separation of their competitive affiliate, and then proceeds to do little more than paste the Commission's rules (unless it is was deemed advantageous to amend a provision) into the remainder of their CSP application .

While Section I of the application purports that the CSP's purpose is to set forth the "processes and controls" the Companies will use to achieve effective corporate separation, most of the next 18 pages are little more than a well organized mirage lacking much real substance at all. When Section XIII is excised, as it fails to substantively add anything besides a reiteration of the Commission's rules. The Companies' application is a mere 13 pages plus attachments to explain how the Companies will implement the 14 specified application requirements set forth in Ohio Admin. Code Rule 4901:1-37-04. Surely the Companies cannot argue that this is intended to qualify as the "**detailed description**" required by Ohio Admin. Code Rule 4901:1-37-05(B)(12). The Companies have sought to provide the bare minimum in their application in hopes the Commission will not require more.

Perhaps the most egregious deficiency relates to the Code of Conduct requirements set forth in Ohio Admin. Code 4901:1-37-04(D). As noted above, Ohio Rev. Code § 4928.17(A) uses words like “implement,” “operate under” and “sufficient to ensure” when referring to the CSP requirements. These words connote action and should be interpreted to require specific, measurable and implement-able processes and controls be established and explained in a CSP application. This is also consistent with the Commission’s rules. Ohio Admin. Code Rule 4901:1-37-05(B)(5) specifically states that the electric utility, at a minimum, must include in its CSP application “a code of conduct *policy* that complies with this chapter and that employees of the electric utility and affiliates must follow.” (emphasis added) A “policy” would seem to suggest more than verbatim (in most cases) recitation of the rules. Further, Rule 4901:1-37-05(B)(12) requires the CSP Application to include “[a] *detailed description* outlining how the electric utility and its affiliates will comply with this chapter,” including the Code of Conduct requirements (emphasis added). Again, a “detailed description” should be more than a recitation of the rules. NOPEC fails to understand how the Companies can provide a detailed description of the programs, processes, and controls they will use to comply with approximately 29 substantive requirements set forth in Ohio Admin. Code Rule 4901:1-37-04 as well as Rule 4901:1-37-05’s 14 specific application requirements in what is effectively a 13 page application.

The application as filed fails to establish any policy or provide a detailed description of how the Companies will comply with the Code of Conduct and many of the other provisions of Chapter 37 as required by Rule 4901:1-37-05(B)(12). For example, the Companies’ application fails to provide any information about what “reasonable efforts” they plan to use “to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies,

and market power. . .”²⁴ Similarly, the application fails to provide any information regarding the channels or processes the Companies will use to “provide comparable access to products and services . . .”²⁵ The application also fails to provide any reviewable detail regarding internal compliance monitoring procedures and methods for corrective action. The application also fails to provide any information about the process and controls that shared employees will comply with in order to “clearly disclose” whether their public representations are being made on behalf of the Companies or on behalf of their competitive affiliate. The list could go on and on, and would extend to other substantive requirements such as the Cost Allocation Manual. Instead of developing a detailed plan to implement the Code of Conduct and other specific application requirements set forth in Ohio Admin. Code 4901:1-37-05 by proposing specific, measurable and reviewable processes, the Companies have essentially limited the Commission’s review of the Application to simply accepting that it adopts and recites the Commission’s rules as approved.

In essence, the Companies have sought to provide the bare minimum in their application in hopes the Commission will not require more. The Commission must require more – much more – in this proceeding to assist in developing a long term competitive retail market in northern Ohio.

D. NOPEC Requests the Commission Adopt a Procedural Schedule Providing for a Hearing to Effectively Address the Insufficiencies Within the Companies’ Application.

Based on its recent opt out process experience, NOPEC has serious demonstrable concerns about the effectiveness of the Companies’ current corporate separation from its competitive affiliate. NOPEC believes that without the substantive review and imposition of detailed processes and controls required by the Commission’s rules, the Companies and their

²⁴ See Ohio Admin. Code 4901:1-37-04(D)(8).

²⁵ See Ohio Admin. Code 4901:1-37-04(D)(8).

competitive affiliate will not be effectively separate, as required by the Commission's rules and as intended, for competition to evolve in the Companies' service territories.

The Commission should establish a full procedural schedule, including a hearing as provided for in Ohio Rev. Code § 4928.17(B), to allow NOPEC and other interested parties discovery and an opportunity to file specific objections and responses to the Companies' CSP application.²⁶ NOPEC believes the Companies' CSP application as filed is materially deficient and fails to provide the substance and details required by Ohio Rev. Code § 4928.17 and the Commission's rules.

IV. CONCLUSION

For the foregoing reasons, NOPEC respectfully requests the Commission grant NOPEC's requested intervention in the proceeding and provide for the full due process provided by Ohio law and the Commission's rules, including full discovery and a hearing, in order to ensure that deficiencies within the Companies' CSP application are fully remedied.

²⁶ See Case No. 08-777-EL-ORD (Sept. 17, 2008), at 6. (Stating that while the Commission did not deem it necessary to provide all parties access to the books, accounts, and records of the electric utility as Staff, the Commission's rules do not limit a party's right to discovery in a pending proceeding pursuant to the Commission's rules of practice.)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Glenn S. Krassen", with a long horizontal flourish extending to the right.

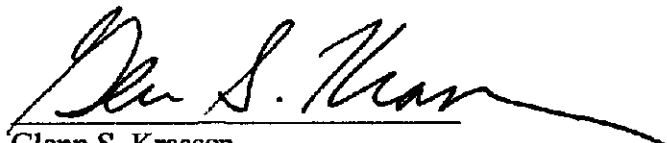
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below, via First Class U.S. Mail, postage prepaid (also electronically), this 1st day of September 2009.



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