

FILE

CITIZEN POWER  
Public Policy Research Education and Advocacy

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October 28, 2009

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

Re: Case No. ~~09-641-EL-ATA~~

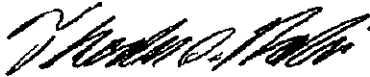
09-535-EL-EEC  
09-536-EL-EEC  
09-537-EL-EEC

Dear Docketing Division:

Enclosed please find for filing an original and (12) twelve 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

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician Ann Date Processed 10/29/09

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Energy Efficiency and )	
Peak Demand Reduction Program Portfolio )	Case No. 09-535-EL-EEC
Of Ohio Edison Company, The Cleveland )	Case No. 09-536-EL-EEC
Electric Illuminating Company, and The )	Case No. 09-537-EL-EEC
Toledo Edison Company. )	

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MOTION OF CITIZEN POWER, INC., TO INTERVENE, MEMORANDUM IN  
SUPPORT AND MOTION TO PRACTICE PRO HAC VICE BEFORE  
THE COMMISSION

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October 28, 2009

Counsel for Citizen Power

BEFORE  
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In the Matter of the Energy Efficiency and	)	
Peak Demand Reduction Program Portfolio	)	Case No. 09-535-EL-EEC
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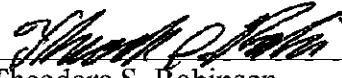
MOTION TO INTERVENE OF CITIZEN POWER, INC.

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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

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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 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 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 concerns an application by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“the Companies”) to include interruptible load under the Optional Load Response and Economic Load Response Riders as programs that satisfy the peak demand reduction benchmark for 2009 under R.C. 4928.66(A)(1)(b) and to also waive the peak demand reduction benchmark for 2009. In the alternative, the Companies request that the benchmarks be set to zero under 4928.66(A)(2)(b). As part of its mission, Citizen Power has advocated for both affordable electricity and energy efficiency in multiple regulatory and legal proceedings. Energy efficiency has the potential to reduce the negative environmental impacts of electricity generation. Similarly, one of the goals of

establishing peak demand reduction benchmarks is to limit the need to construct new generation facilities. 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.

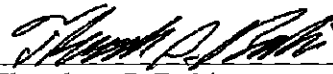
First, as evidenced above, the nature and extent of Citizen Power’s interest in these proceedings is substantial. As an advocate for energy efficiency and demand response, Citizen Power has a specific interest that the environmental impacts from the generation of electricity are as minimal as possible. Second, Citizen Power’s position is that the Companies’ request to waive the peak demand reduction benchmark or, in the alternative, modify the benchmark to zero, is inconsistent with R.C. 4928.66. 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 about the environmental and rate effects of the Company’s application.

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

Respectfully submitted,



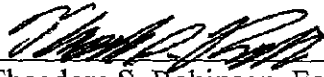
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene, 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 28<sup>th</sup> day of October, 2009.

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

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**I. MOTION FOR ADMISSION PRO HAC VICE**

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.

**II. MEMORANDUM IN SUPPORT**

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

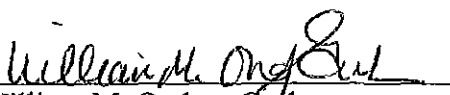
utility services, including those relating to activities that the Commission has jurisdiction over. Mr. Robinson's contact information is:

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### III. CONCLUSION

For the reasons set forth above, 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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