

FILE

# CITIZEN POWER

Public Policy Research Education and Advocacy

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February 25, 2010

Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215-3793

Re: Case No. 09-1922-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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Technician Oliver Date Processed 2-26-2010

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of The Application Of Ohio Edison	)	
The Cleveland Electric Illuminating Company and	)	Case No. 09-1922-EL-EEC
The Toledo Edison Company for Approval of a	)	
Force Majeure Determination for a Portion of	)	
The 2009 Solar Energy Resources Benchmark	)	
Requirement Pursuant to Section 4928.64(C)(4)	)	
of the Ohio Revised Code	)	

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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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February 25, 2010

Counsel for Citizen Power

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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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Theodore S. Robinson  
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e-mail: [robinson@citizenpower.com](mailto:robinson@citizenpower.com)

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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), the FirstEnergy MRO Cases (08-936-EL-SSO) and (09-906-EL-SSO), and the FirstEnergy Peak Demand Case (09-535-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 for a portion of the 2009 solar energy resources benchmark requirement pursuant to Section 4928.64(C)(4) of the Ohio Revised Code. Specifically, the Companies request that the Commission make a force majeure determination and reduce the 2009 benchmarks from 943 solar renewable energy credits ("SRECs") based in Ohio and 943 SRECs based in either Ohio or a contiguous state to 0 SRECs based in Ohio and 49 SRECs based in either Ohio or a contiguous state. The determination of whether the Companies can amend these solar energy resource

benchmarks, the amount of that amendment, and the form that such an amendment would take could have significant environmental impacts. In addition, the outcome of this application may ultimately impact residential customers' rates. As a non-profit organization dedicated to conserving the environment, promoting renewable energy sources, supporting 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. Second, Citizen Power's legal position is that a determination must be made under R.C. 4928.64(C)(4) whether a force majeure determination is appropriate. 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 both the impact of the programs upon residential low-income customers' rates and the potential environmental impacts of the programs.

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

Respectfully submitted,

  
\_\_\_\_\_  
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Citizen Power  
2121 Murray Avenue  
Pittsburgh, PA 15217  
Telephone: (412) 421-7029  
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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

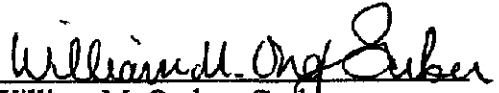
December of 2006, Member No. 203852. Mr. Robinson's representation of Citizen Power includes the support of Citizen Power's activities related to the State of Ohio's utility services, including those relating to activities that the Commission has jurisdiction over. Mr. Robinson's contact information is:

Theodore S. Robinson  
Citizen Power, Inc.  
2121 Murray Avenue  
Pittsburgh, PA 15217  
Tel: (412) 421-7029  
Fax: (412) 421-6162  
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### **III. CONCLUSION**

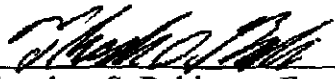
For the reasons set forth above, William M. Ondrey Gruber requests that Theodore S. Robinson be permitted to practice before the Commission in the aforementioned proceedings.

Respectfully submitted,

  
William M. Ondrey Gruber  
Attorney-at-Law  
(Registration No. 0005950)  
2714 Leighton Road  
Shaker Heights, Ohio 44120  
(216) 371-3570  
E-Mail: GruberWL@aol.com

## 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 25<sup>th</sup> day of February, 2010.

  
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