IN THE SUPREME COURT OF OHIO

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,	)	Case No. 2020-0277
Appellant,	)	On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District
-vs-	)	Court of Appeals Case No. 19-108560
CITY OF CLEVELAND, et al.,	)	
Appellants.	)	

BRIEF OF THE OHIO POWER COMPANY, DUKE ENERGY OHIO, INC., AND THE DAYTON POWER AND LIGHT CO. AMICI CURIAE IN SUPPORT OF APPELLANT

Steven T. Nourse (0046705)
American Electric Power Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Tel.: (614) 716-1608;
Fax: (614) 716-2950
stnourse@aep.com

Counsel for Amicus Curiae Ohio Power Company

James E. McLean (0046868)
Duke Energy Ohio, Inc.
139 E. Fourth Street, M/C 1212-Main
Cincinnati, Ohio 45202
Tel.: (513) 287-4341;
Fax: (513) 287-4386
James.McLean@duke-energy.com

Counsel for Amicus Curiae Duke Energy Ohio, Inc.

Michael J. Schuler (0082390)
Counsel of Record
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7358

Kimberly W. Bojko (0069402)
Counsel of Record
Angela Paul Whitfield (0068774)
Stephen E. Dutton (0096064)
CARPENTER, LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Tel.: (614) 365-4100;
Fax: (614)365-9145
ojko@carpenterlipps.com
paul@carpenterlipps.com
dutton@carpenterlipps.com

Counsel for Appellees City of Cleveland and Cleveland Public Power

Kevin M. Butler (0074204)
Law Director
City of Brooklyn, Ohio
7619 Memphis Avenue
Brooklyn, OH 44144
kbutler@brooklynohio.gov

Counsel for Appellee/Cross-Appellant City of Brooklyn

Telecopier: (937) 259-7178
Email: michael.schuler@aes.com

Counsel for The Dayton Power and Light Company

Gregory J. Phillips (0077601)
Counsel of Record
Michael J. Montgomery (0070922)
Michael D. Meuti (0087233)
James E. von der Heydt (0090920)
James J. Walsh, Jr. (0096660)
Benesch, Friedlander, Coplan
& Aronoff LLP
200 Public Square, Suite 2300
Cleveland, Ohio 44114
Tel.: (216) 363-4500;
Fax: (216) 363-4588
gphillips@beneschlaw.com
mmontgomery@beneschlaw.com
mmeuti@beneschlaw.com
jvonderheydt@beneschlaw.com
jwalsh@beneschlaw.com

Counsel for Appellant The Cleveland Electric Illuminating Company

Lisa G. McAlister (0075043)
General Counsel for Regulatory Affairs
Counsel of Record
Gerit F. Hull (0067333)
Deputy General Counsel for Regulatory Affairs
American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, OH 43229
Tel.: (614) 540-1111
lmcalister@amppartners.org
ghull@amppartners.org

Counsel for American Municipal Power, Inc., Amicus Curiae in Support of Appellees/Cross-Appellants

Drew H. Campbell (0047197)
Counsel of Record
Elyse Akhbari (0090701)
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
dcampbell@bricker.com
eakhbari@bricker.com

Counsel for Appellee/Cross-Appellant Cuyahoga County

TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTERESTS OF AMICI CURIAE

Ohio Power Company ("AEP Ohio") is a "public utility company" pursuant to R.C. 4905.03 and an "electric supplier" pursuant to Ohio's Certified Territories Act, R.C. 4933.81(A), providing retail electric (commonly referred to as distribution) service to 1.4 million residential, commercial, and industrial customers in its 66-county service area. AEP Ohio is responsible for maintaining distribution infrastructure (such as wires and poles) in counties across the State.

Duke Energy Ohio, Inc. ("Duke Energy") is also a public utility company and an electric supplier, providing retail electric service to about 860,000 residential, commercial, and industrial customers located in its 3,000-square-mile service area. Duke Energy is responsible for providing maintenance and service to the wires and poles comprising its distribution network—a critical component of Butler, Hamilton, Warren, Clermont, Brown, and Clinton Counties' infrastructure.

AEP Ohio and Duke Energy (collectively, "Amici Curiae") are regulated by the Public Utilities Commission of Ohio ("PUCO"). The PUCO assigns exclusive service areas to regulated utilities under the Certified Territories Act. As part of this regulatory scheme, the PUCO reviews and approves tariffs, which control the prices that regulated utilities can charge and the costs they can recognize and recover. Together, Ohio's major electric distribution utilities are responsible for modernizing and maintaining the infrastructure necessary to power homes across most of the State.

Amici Curiae appreciate the Court's acceptance of this discretionary appeal and now in support of Appellant, CEI, respectfully urge this Court to adopt the Propositions of Law below. Ohio's electric industry is partially deregulated; this works because both regulated and unregulated utility operations have designated boundaries for their operations. For regulated electric distribution utilities, the PUCO assigns exclusive geographic territories in which each may operate

and determines the rates that they may charge. Municipal utilities such as Appellee Cleveland Public Power ("CPP"), by contrast, operate without PUCO regulation. Article XVIII of the Ohio Constitution authorizes a municipal utility to service and supply electricity to the municipality's inhabitants, but not to intrude upon a regulated utility's territory or poach the regulated utility's customers outside municipal boundaries. Amici Curiae respectfully urge the Court to reverse the Eighth District's decision below to prevent such poaching and maintain Article XVIII's careful balance between what municipal utilities may and may not do with respect to the resale of purchased electric energy.

STATEMENT OF THE CASE AND FACTS

Amici Curiae incorporate by reference CEI's recitation of the case and facts.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: ***A municipal utility violates Article XVIII, sections 4 and 6 if it sells electricity outside municipal boundaries from an artificial surplus, including any avoidable excess electricity a municipality purchases that was not to supply the city or its inhabitants.***

Proposition of Law No. 2: ***A municipal utility violates Article XVIII, sections 4 and 6 if it can buy only the amount of electricity needed within the city, but instead it buys excess electricity and sells electricity outside municipal boundaries.***

Proposition of Law No. 3: ***A municipal utility violates Article XVIII, Sections 4 and 6 if it buys any amount of electricity for a purpose other than supplying that electricity to itself or its inhabitants, then sells the resulting excess to customers outside city limits.***

Regulated electric distribution utilities like Amici Curiae need protection from unbridled incursions into their territories by unregulated municipal utilities such as CPP. Without that protection, regulated utilities will lose the economic benefits that warrant their continuing to invest in infrastructure necessary to bring power to Ohio's residents. The municipal utilities' incursions undercut the regulated utilities' ability to predict the need or electric demand of their customers

and thus threaten the delicate balance between regulated and municipal utilities that the Constitution and the General Assembly have crafted. When, as here, a municipal utility seeks to create and exploit a constitutional loophole by purchasing and reselling electric energy outside of its boundaries, regulated utilities suffer. And with them, so does the electricity-consuming public.

Regulated utilities in Ohio, including Amici Curiae, are under siege from unfair competition by municipal utilities. Municipal utilities enjoy advantages unavailable to regulated utilities, including freedom from PUCO regulation and rate-setting, and more-favorable tax treatment. Because PUCO rules and rates do not apply to municipal utilities, their only constraint is the cost of their debt. Municipal utilities can use this advantage to undercut Ohio's regulated utilities, cherry-pick the regulated utilities' customers in the regulated utilities' own territories, and then raise those consumers' rates after securing them.

This unfair competition flouts the regime enacted by the Ohio Constitution and the Certified Territories Act, R.C. 4933.81 *et seq*. The Constitution, through the home-rule provisions of Article XVIII, (a) provides municipalities a limited right to generate or contract for the electricity that they and their inhabitants require, and (b) restricts municipalities' ability to sell excess electricity that they may have. The Certified Territories Act, on the other hand, grants regulated utilities limited geographic monopolies in return for their adherence to PUCO regulation. The unfair competition that municipalities are waging against regulated utilities disturbs this delicate balance and threatens to disrupt Ohio's electricity markets.

Indeed, this unfair competition was precisely what the drafters of Article XVIII sought to avoid. Article XVIII, Section 4 authorizes municipalities to buy, through a municipal utility, only that amount of electricity necessary to supply the city and its residents:

> Any municipality may . . . operate . . . any public utility *the product or service of which is or is to be supplied to the municipality or its*

> *inhabitants*, and may contract with others for any such product or service.

Ohio Const. Art. XVIII, Section 4 (emphasis added). Not only does Section 4's text make that clear, so does this Court's jurisprudence. Specifically, this Court has repeatedly held "that the power to 'contract with others for any such product or service' confers authority to contract solely for the purchase by the municipality of utility products or services for its inhabitants." *Britt v. City of Columbus*, 38 Ohio St. 2d 1, 9, 309 N.E.2d 412 (1974) (citing *State, ex rel. Mitchell, v. Council of Milan*, 133 Ohio St. 499, 14 N.E.2d 772 (1938); *Ohio River Power Co. v. Steubenville*, 99 Ohio St. 421, 124 N.E. 246 (1919); *Ohio Power Co. v. Attica*, 23 Ohio St. 2d 37, 261 N.E.2d 123 (1970)).

Article XVIII, Section 6 addresses a different question: When can a municipality sell electricity to customers outside city limits? Section 6's answer is twofold: (a) the municipality may sell only "surplus product," and (b) its sales of that surplus product cannot exceed 50% of what it supplies within the municipality. Ohio Const. Art. XVIII, Section 6 ("Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others . . . the surplus product of any [electric] utility in an amount not exceeding in either case fifty per cent of the total service or product supplied by such utility within the municipality").

As this Court has previously recognized, Sections 4 and 6 of Article XVIII, read *in pari materia*, prohibit municipal utilities from competing unfairly by serving as de facto brokers of electricity. *Toledo Edison Co. v. Bryan*, 90 Ohio St. 3d 288, 293, 737 N.E.2d 529 (2000). *See also* George Vaubel, *Municipal Home Rule in Ohio* (1978) at 1459 ("As stated by the supreme court, the writers of the Home Rule Amendments did not intend to authorize municipalities to go

into the supply of public utility services as a business.") (citing *State ex rel. Wilson v. Hance*, 169 Ohio St. 457, 461, 159 N.E.2d 741 (1959)).

Significantly, this Court recognized that not all excess electricity amounts to "surplus" under Section 6. Instead, for Article XVIII, Section 6 to permit sales outside a municipality's boundaries, the surplus must be genuine—*i.e.*, electricity that remains after the municipality or its residents' needs are met. In other words, a municipal utility may not manufacture an artificial surplus through avoidable or preventable excess purchases and then sell that electricity outside the municipality. *Toledo Edison*, 90 Ohio St.3d at 293.

The Eighth District's opinion threatens to undermine that constitutional rule, and with it, the careful balance between regulated and municipal utilities. That is because, if allowed to stand, the Eighth District's opinion could be read to offer municipal utilities a "get out of a constitutional violation free card," enabling them to dodge Article XVIII's limitations and evade liability for doing so. Specifically, the opinion invites municipal utilities to avoid constitutional liability by concocting pretextual rationales or other evidence that could justify, in the Eighth District's view, the very same extraterritorial sales that Article XVIII prohibits. Quite simply, CPP should not be permitted to proffer any rationale or evidence to justify a departure from the Ohio Constitution's clear mandates. For these reasons and those explained more fully below, Amici Curiae respectfully urge this Court to adopt the foregoing Propositions of Law advanced by CEI and reverse the Eighth District's decision.

A. The Ohio Constitution permits a municipal utility to sell electricity from a genuine surplus, but not to create an artificial surplus and sell it.

There is no dispute that Ohio Constitution Article XVIII, Section 4 authorizes municipalities to purchase electricity for its inhabitants ("Any municipality may . . . contract with others for any such product or service."). Nor is there any dispute that Ohio Constitution Article

XVIII, Section 6 authorizes municipalities to sell some surplus electricity outside of its municipal limits ("Any municipality. . . may also sell and deliver to others . . . the surplus product of any [electric] utility in an amount not exceeding in either case fifty per cent of the total service or product supplied by such utility within the municipality."). Rather, the issue is what *restrictions* these provisions impose on a municipality's right to purchase and resell electricity beyond its municipal limits. CPP is trying to avoid those restrictions, and unfortunately the Eighth District's opinion creates new loopholes likely to encourage such conduct.

As early as 1959, this Court recognized that the framers of the Constitution "clearly intended to limit municipalities primarily to the furnishing of services to their own inhabitants and to prevent such municipalities from entering into the general public-utility business outside their boundaries in competition with private enterprise." *State ex. rel. Wilson v. Hance, supra,* 169 Ohio St. at 461, 159 N.E.2d 741. Again in 2000, this Court emphasized that a municipality's authority to purchase electricity is limited to meeting the needs of its residents. *Toledo Edison,* 90 Ohio St. 3d at 291–92, 737 N.E.2d 529 (quoting *Wilson*).

When this Court last confronted this issue—20 years ago—the municipalities in *Toledo Edison* were purchasing electricity to resell it to a smelting company located outside of the municipalities' corporate limits. This Court held that their conduct amounted to "de facto brokering of electricity," which Article XVIII, Sections 4 and 6 prohibit. *Id* at 292. Focusing on Section 6's requirement that sales to customers outside of the municipality must come from surplus product, the Court concluded that *surplus* embraces only whatever electricity remains after the municipality or its residents' needs are met. *Id.* at 292–93; *see id.* at 292 (defining surplus as "the amount that remains when use or need is satisfied"). The Supreme Court's reasoning contemplates that the selling of any "surplus" electricity must be genuine—that is, a municipality may only sell

surplus electricity unavoidably left over *after* the needs of its habitants have been met. But where a municipality purchases electricity for purpose of reselling it outside the municipality's corporate limits, any excess cannot be considered genuine—to the contrary, it is completely manufactured and "artificial." And if municipalities are permitted to sell artificial surplus, Section 6 will be effectively construed as a provision of permission rather than a provision of limitation.

The Court in *Toledo Edison* also presciently observed that enforcing that distinction is crucial, lest municipal utilities leverage their lack of regulation to compete unfairly: "to allow municipalities the unfettered authority to purchase and then resell electricity to entities outside their boundaries could create unfair competition for the heavily regulated public utilities." *Toledo Edison*, 90 Ohio St. 3d at 293, 737 N.E.2d 529. That concern is all the more pressing today, given the structure of today's wholesale electricity markets. Municipalities in Ohio have more options and resources than ever before—and certainly more than when this Court decided *Toledo Edison*—for sourcing electricity.

Ohio restructured its electric industry in the early 2000s, providing utilities, municipal and regulated alike, access to the wholesale electric market. Municipal utilities can now purchase on the wholesale market the precise amount of electricity that their residents require, negating any need to generate their own electricity. The ability to access regional transmission organizations or "RTOs" allows municipal utilities to match their demand with supply through regional capacity market auctions.[1] Consequently, municipalities can purchase, in real time, the exact amount of electricity required to meet their needs and the needs of their residents, negating any need to

[1] PJM Learning Center, Capacity Markets RPM, *available at*: https://learn.pjm.com/three-priorities/buying-and-selling-energy/capacity-markets.aspx (accessed August 18, 2020).

purchase excess electricity.[2] And when there is no need to purchase excess electricity, any excess purchase is necessarily avoidable and is thus an "artificial" surplus that may be resold outside municipal boundaries.

B. The Eighth District's opinion threatens the stability of Ohio's electricity markets by offering municipal utilities a loophole to avoid the Constitution's clear limitations.

While the Eighth District properly concluded that when a municipality purchases more electricity than it needs to supply its residents, it creates an artificial surplus, the Court of Appeals erred by articulating a new and vague exception. The Eighth District implied that if a municipality provides some reason for purchasing excess electricity, other than for resale outside of the municipality, it may avoid a constitutional violation under Article XVIII. *See* Decision, ¶ 41. For instance, the Court suggested that if the municipality identifies "cost, risk mitigation, economies of scale, environmental impact, and reliability" as a justification for purchasing excess electricity, it may not run afoul of the Constitution. *See* Decision, ¶ 39.

This exception, however, is found nowhere in the text of Article XVIII. This Court should reject the Eighth District's attempt to insert new exceptions into constitutional provisions. *See, e.g., State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 328, 2009-Ohio-4900, 916 N.E.2d 462 (declining to insert additional exception to constitutional provision where provision already provided three exceptions). And the exception invites unregulated municipal utilities to ignore both Section 4's express limitation on their authority to purchase electricity (*i.e.*, only the

[2] PJM Glossary, *available at*: https://www.pjm.com/Glossary.aspx (accessed August 18, 2020) ("The real-time energy market is a balancing market in which the clearing prices are calculated every five minutes based on the actual system operations security-constrained economic dispatch.")

amounts necessary to supply their inhabitants), and Section 6's express limitation on their authority to sell it (*i.e.*, only genuine surplus). It does so by providing an escape hatch.

Suppose, for example, that a municipal utility is discovered buying more electricity than needed to supply its inhabitants, and then selling that excess to customers outside the municipality. The Eighth District's opinion invites that municipal utility to skirt the Constitution by ginning up an alternative motivation for purchasing the excess electricity. By invoking any number of pretexts, including the previously mentioned justifications mentioned in the Eighth District's opinion (at ¶ 39), municipalities can effectively shield themselves from lawsuits challenging their de facto brokering—the exact result that this Court sought to preclude in both *Hance* and *Toledo Edison.*

Put differently, the Eighth District's opinion effectively eviscerates *Toledo Edison*'s distinction between artificial and genuine surplus. Under the Eighth District's standard, an artificial surplus will not be called what it really is if the municipality can simply concoct an alternative justification for its purchase. Instead, a municipality can convert an artificial surplus into a "genuine" one merely by using clever wording and inventive labels. Municipalities may argue that purchasing more electricity than their citizens need may have benefits of the kinds enumerated by the Eighth District, but that this does not mean municipalities may dispose of excess electricity in a manner the Constitution does not authorize. It should also go without saying that a post-hoc contrivance should not excuse a constitutional violation, and thus the Eighth District erred in adding new exceptions to the requirements of the Ohio Constitution. If this Court does not reverse the Eighth District on this aspect of its decision, such contrivances will proliferate, and unregulated municipal utilities will grow more brazen in encroaching upon regulated utilities' territories, competing unfairly, and poaching their customers.

As shown above, that unfair competition flouts the intent of both the Ohio Constitution's drafters and the General Assembly. Article XVIII's drafters did not intend for municipalities to compete with private enterprise by serving as de facto electricity brokers. And if the General Assembly intended to encourage that type of competition, it could have indicated as much when it established the regulated utilities' statutory right to serve customers in specified geographic areas known as the Certified Territories Act—but it did no such thing. *See generally* R.C. 4933.81 *et seq.*; *State ex rel. Toledo Edison Co. v. City of Clyde*, 76 Ohio St. 3d 508, 517, 668 N.E.2d 498 (1996) (analyzing the Certified Territories Act to determine a municipality's rights).

The Eighth District remanded the matter to the trial court to apply a newly minted test that has no basis in the Ohio Constitution or in this Court's precedent. This Court should reverse the Eighth District and order the trial court to enter judgment as a matter of law in favor of CEI. The parties' respective summary-judgment papers present this Court with all of the information required for this Court to confirm, as a matter of law, that CEI is entitled to the relief it sought in connection with CPP's impermissible attempt to sell electricity outside of its municipal boundaries, which would undermine the delicate balance between regulated and municipal utilities that the drafters of the Ohio Constitution and the General Assembly have crafted.

C. Amicus Curiae American Municipal Power, Inc.'s jurisdictional-phase contentions lack merit.

Amicus curiae American Municipal Power, Inc. ("AMP") made several arguments at the jurisdictional phase to support the Court's acceptance of Appellees' cross-appeal, none of which is availing. To the extent that AMP repeats these contentions at the merit phase, the Court should reject them. For example, AMP argues that the Certified Territories Act favors CPP, and not CEI. (AMP Br. 8). AMP specifically relies on various subsections of the Act that provide that the rights

of municipalities under Article XVIII shall not be abridged or that the rights of public utilities are otherwise subject to the constitutional rights of municipalities. (*Id.*) But a statute's provision that a municipality's constitutional right shall not be abridged does not (and cannot) expand constitutional rights in ways that are not tethered to the Constitutional text or provided for by this Court.

Further, in an effort to argue that municipalities are heavily regulated like other public utilities, AMP cites various statutes to which state entities are subject but other suppliers are not. (AMP Br. 9 (citing, among other things, public-records law, wage laws, laws for public hearings on budgets).) But AMP's citation to a handful of statutes that apply to governmental entities says nothing about the key considerations: whether municipal utilities are regulated by PUCO as electric energy suppliers (they are not), or whether the Ohio Constitution affords municipal utilities "unfettered authority" in the purchase and resale of electricity (it does not). *See Toledo Edison*, 90 Ohio St. 3d at 292.

AMP's other arguments are also misplaced. AMP cites AEP's 2017 Accountability Report for the proposition that AEP "has already availed itself of the opportunity to avoid procuring capacity in PJM's markets," and infers that CPP should not be expected to "rely solely on PJM markets." (AMP Br. 13.) AMP's argument again misses the mark by conflating capacity with energy. Regardless of AEP's participation in the PJM Capacity Market, which helps utilities arrange for long-term electric supply, CPP has offered no reason as to why it cannot participate in the Energy Market, which provides for real-time acquisition of actual electricity and obviates any need to purchase any excess electricity.[3] Such interstate power markets did not exist at the time

[3] PJM, Understanding The Differences Between PJM's Markets, *available at*: https://learn.pjm.com/-/media/about-pjm/newsroom/fact-sheets/understanding-the-difference-

when Article XVIII was enacted but they do not change the meaning of those constitutional provisions. A municipal utility with access to them need never have a surplus of electricity.

In sum, AMP's arguments provide no support for CPP's position.

CONCLUSION

As explained above, the Eighth District's opinion invites municipal utilities to violate the constitutional limitations on how much electricity they can purchase and resell and thus to serve as *de facto* electricity brokers. That opinion not only contravenes this Court's precedent, but it also threatens to upend the balance that Article XVIII and the Certified Territories Act strikes between regulated utilities and unregulated municipal utilities. The Court should reverse the Eighth District's decision, reject Appellees' cross-appeal, and remand the case for entry of judgment as a matter of law in favor of Appellant CEI.

Respectfully submitted,

/s/ Steven T. Nourse
Steven T. Nourse (0046705)
American Electric Power Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608
Facsimile: (614) 716-2950
stnourse@aep.com

Counsel for Amicus Curiae Ohio Power Company, Inc.

/s/ James E. McLean
James E. McLean (0046868)
Duke Energy Ohio, Inc.
139 E. Fourth Street, M/C 1212-M
Cincinnati, Ohio 45202
Telephone: (513) 287-4341

between-pjms-markets-fact-sheet.ashx (describing the differences between the Energy Market and the Capacity Market) (accessed August 18, 2020).

Facsimile: (513) 287-4386
James.McLean@duke-energy.com

Counsel for Amicus Curiae Duke Energy Ohio, Inc.

/s/ Michael J. Schuler
Michael J. Schuler (0082390)
Counsel of Record
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7358
Telecopier: (937) 259-7178
Email: michael.schuler@aes.com

Counsel for The Dayton Power and Light Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief of Amici Curiae in Support of Appellant was sent this 31st day of August 2020, via email to the following counsel:

Gregory J. Phillips (0077601)
Michael J. Montgomery (0070922)
Michael D. Meuti (0087233)
James E. von der Heydt (0090920)
James J. Walsh, Jr. (0096660)
BENESCH, FRIEDLANDER, COPLAN & ARONOFF
gphillips@beneschlaw.com
mmontgomery@beneschlaw.com
mmeuti@beneschlaw.com
jvonderheydt@beneschlaw.com
jwalsh@beneschlaw.com

Attorneys for Plaintiff-Appellant
The Cleveland Electric Illuminating Company

Kimberly W. Bojko (0069402)
Angela Paul Whitfield (0068774)
Stephen E. Dutton (0096064)
CARPENTER, LIPPS & LELAND LLP
bojko@carpenterlipps.com
paul@carpenterlipps.com
dutton@carpenterlipps.com

Counsel for Defendants-Appellees
City of Cleveland and Cleveland Public Power

Drew H. Campbell (0047197)
Elyse Akhbari (0090701)
BRICKER & ECKLER LLP
dcampbell@bricker.com
eakhbari@bricker.com

Counsel for Appellee/Cross-Appellant
Cuyahoga County

Kevin M. Butler (0074204)
Law Director
City of Brooklyn, Ohio
kbutler@brooklynohio.gov

Counsel for Appellee/Cross-Appellant City of Brooklyn

Lisa G. McAlister (0075043)
Gerit F. Hull (0067333)
American Municipal Power, Inc.
lmcalister@amppartners.org
ghull@amppartners.org

Counsel for American Municipal Power, Inc.,
Amicus Curiae in Support of Appellees/Cross-Appellants

/s/ Steven Nourse
Counsel of Record for Ohio Power Company,
Amicus Curiae in Support of Appellant