

# McDermott Will & Emery

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September 5, 2008

VIA FEDERAL EXPRESS

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

PUCO

2008 SEP - 8 AM 9:43

RECEIVED-DOCKETING DIV

Re: Case Nos. 08-920-EL-SSO; 08-921-EL-AAM; 08-922-EL-UNC; 08-923-EL-ATA

Dear Sir or Madam:

Pursuant to the order issued by the Attorney Examiner on September 5, 2008, enclosed for filing please find an original and 20 copies of the Motion to Intervene and Memorandum In Support of Morgan Stanley Capital Group Inc. and the Motion for Pro Hac Vice for Greg Lawrence in the above-referenced case which was e-filed with the Commission on September 4, 2008.

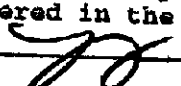
Also enclosed is one extra copy of each document to be dated-stamped and returned to me in the enclosed, self-addressed Federal Express envelope. Please do not hesitate to contact me at the number above if you have any questions.

Thank you for your assistance in this matter

Sincerely,

  
Douglas M. Mancino

DMM/maj  
Enclosures

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U.S. practice conducted through McDermott Will & Emery LLP.

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan	) )	Case No. 08-920-EL-SSO
In the Matter of the Application of Duke Energy Ohio for Approval to Amend Accounting Methods	) ) )	Case No. 08-921-EL-AAM
In the Matter of the Application of Duke Energy Ohio for Approval of a Certificate of Public Convenience and Necessity to Establish an Unavoidable Capacity Charge(s)	) ) ) )	Case No. 08-922-EL-UNC
In the Matter of the Application of Duke Energy Ohio for Approval to Amend its Tariff	) )	Case No. 08-923-EL-ATA

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**MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT OF  
MORGAN STANLEY CAPITAL GROUP INC.**

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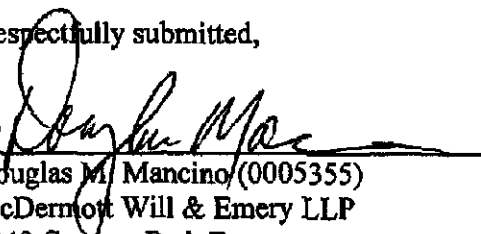
Now comes Morgan Stanley Capital Group Inc., who, pursuant to Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code moves for intervention in the above styled proceeding as a full party of record. The reasons supporting the intervention are contained in the accompanying Memorandum in Support.

By separate motion, a request for admission *Pro Hac Vice* for Gregory K. Lawrence, of the firm of McDermott Will & Emery, LLP, has been filed in the above captioned proceedings. Morgan Stanley Capital Group Inc. asks that if approved he be added to the official service list along with Steven Huhman, Vice President of Morgan Stanley Capital Group Inc. Contact information for the additional counsel and vice president are provided in the attached Memorandum in Support.

WHEREFORE, Morgan Stanley Capital Group Inc. respectfully requests that the Commission grant this motion for leave to intervene and that Morgan Stanley Capital Group Inc. be made a full party of record.

Respectfully submitted,

/s/

  
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**Attorneys for  
Morgan Stanley Capital Group Inc.**

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy ) Ohio for Approval of an Electric Security Plan )	Case No. 08-920-EL-SSO
In the Matter of the Application of Duke Energy ) Ohio for Approval to Amend Accounting ) Methods )	Case No. 08-921-EL-AAM
In the Matter of the Application of Duke Energy ) Ohio for Approval of a Certificate of Public ) Convenience and Necessity to Establish an ) Unavoidable Capacity Charge(s) )	Case No. 08-922-EL-UNC
In the Matter of the Application of Duke Energy ) Ohio for Approval to Amend its Tariff )	Case No. 08-923-EL-ATA

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE OF  
MORGAN STANLEY CAPITAL GROUP INC.**

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Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, establish the standard for intervention in the above-styled proceeding as a full party of record.

Rule 4901-1-11 of the Ohio Administrative Code states in part:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

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(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

In addition to establishment of a direct interest, the factors that the Public Utilities Commission of Ohio (the "Commission") considers in implementing the above rule are the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues involved,

and whether intervention would result in an undue delay of the proceeding.<sup>1</sup> A review of these factors in light of following facts supports granting Morgan Stanley Capital Group Inc.'s ("MSCG") request for intervention.

MSCG, a wholly-owned subsidiary of Morgan Stanley, is a corporation organized under the laws of Delaware with its principal place of business in New York, New York. Pursuant to its authorization from the Commission to sell wholesale power at market-based rates,<sup>2</sup> MSCG buys and sells wholesale power in various markets throughout the United States.

In the instant matter, Duke Energy Ohio ("DE-Ohio") filed an application (the "Application") for authority to establish a Standard Service Offer in the form of an Electric Security Plan pursuant to R.C. § 4928.143 to be effective on January 1, 2009.

MSCG is a potential wholesale provider in the electricity market in the State of Ohio. MSCG has business interests in the State that will be affected by the outcome of the proceeding. As a potential supplier of electric power and energy in the State, MSCG has an interest in the instant proceeding as the Commission assesses whether the Application is consistent with Senate Bill 221, which became law effective July 31, 2008, and makes other decisions that will affect the viability of the competitive electric market in Ohio. MSCG's experience and insights are substantial and unique and cannot adequately be represented by other parties to the proceeding, the outcome of which may be binding and have a substantial and direct impact on MSCG.

This motion for intervention precedes all discovery or other procedural termination dates. The Motion is also being filed more than five days before the hearing deadline established in Rule 4901-1-29. Thus, the intervention is timely and should not unduly delay the instant proceedings. Finally, because of its unique expertise and participation in the competitive retail and wholesale markets in Ohio and across the country, MSCG will be able to assist in the

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<sup>1</sup> See also R.C. 4903.221(B) upon which the above rule is authorized.

<sup>2</sup> *Morgan Stanley Capital Group, Inc.*, 69 FERC ¶ 61,175 (1994).

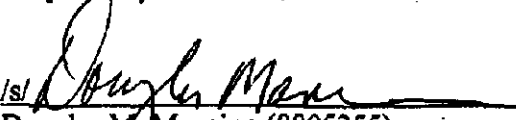
development of a full and complete record to assist the Commission in its consideration of the Application.

WHEREFORE, Morgan Stanley Capital Group Inc. respectfully requests that the Commission grant this motion for leave to intervene and Morgan Stanley Capital Group Inc. be made a fully party of record. For purposes of receiving service in the proceeding, in addition to the undersigned, MSCG requests that the following persons be place on the official service list.

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Respectfully submitted,

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**Attorneys for  
Morgan Stanley Capital Group Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum in Support of Morgan Stanley Capital Group Inc.. was served upon the following parties of record this 4th day of September, 2008, via first class mail, postage prepaid.

/s/   
Douglas Mancino

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