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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric ) Case No. 10-176-EL-ATA  
Illuminating Company, and The Toledo )  
Edison Company For Approval of a New )  
Rider and Revision of an Existing Rider. )

**MOTION FOR LEAVE TO INTERVENE OF  
CONSTELLATION NEWENERGY, INC.**

Pursuant to Section 4903.221, Revised Code, Rule 4901-1-11 of the Ohio Administrative Code, and the October 8, 2010 Entry in this matter, Constellation NewEnergy, Inc. ("Constellation" or "CNE"), 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, filed contemporaneously with this motion for intervention, is a request for admission *Pro Hac Vice* for Cynthia Fonner Brady, Senior Counsel for Constellation, has been filed in the above-styled proceeding. Constellation asks that if approved she be added to the official service list along with David Fein, who is a representative corporate officer. Contact information for the additional counsel and corporate representative are provided in the attached Memorandum in Support.

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

Respectfully Submitted,



M. Howard Petricoff (0008287)  
Stephen M. Howard (0022421)  
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**MEMORANDUM IN SUPPORT OF  
THE MOTION TO INTERVENE OF  
CONSTELLATION NEWENERGY, INC.**

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:

\* \* \*

(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. (See also R.C. 4903.221(B) upon which the above rule is authorized). A review of these factors in light of following facts supports granting Constellation's intervention.

Constellation provides electricity and energy-related services to retail customers in Ohio as well as in 15 other states, the District of Columbia and two Canadian provinces and serves more than 15,000 megawatts of load and more than 10,000 customers. CNE holds a certificate as a competitive retail electric supplier ("CRES") from the Commission to engage in the competitive sale of electric service to retail customers in Ohio. CNE currently provides service

to retail electric customers in the FirstEnergy service territories in Ohio. CNE is a subsidiary of Constellation Energy Group, Inc.

In the instant matter, FirstEnergy filed an application in this proceeding to revise its current tariffs in order to provide rate relief to certain all-electric customer. On March 3, 2010, the Commission issued its Finding and Order in this proceeding, approving FirstEnergy's application as modified by the Commission and providing interim rate relief for all-electric residential customers. On March 8, 2010, the Ohio Consumers' Counsel (OCC) filed an application for rehearing. On April 6, 2010, the Commission granted rehearing for the purpose of further consideration of the matter specified in the application for rehearing. Subsequently, on April 15, 2010, the Commission denied rehearing in its Second Entry on Rehearing (April 15, 2010 Entry) in this proceeding.

On April 2, 2010, FirstEnergy also filed an application for rehearing regarding the Commission's March 3, 2010, Finding and Order. The Commission granted rehearing on April 28, 2010 in the Third Entry on Rehearing in this proceeding.

On May 14, 2010, FirstEnergy filed an application for rehearing regarding the April 15 Entry. Further, on May 17, 2010, the Industrial Energy Users-Ohio (IEU-Ohio) and OCC each filed applications for rehearing arguing that the April 15 Entry is unreasonable and unlawful on two separate grounds. On June 9, 2010, the Commission granted rehearing for the purpose of further consideration of the matter specified in the May 14, 2010 FirstEnergy application for rehearing and the May 17, 2010 applications for rehearing filed by IEU-Ohio and by OCC.

In the Finding and Order issued on March 3, 2010, the Commission directed the Staff to file a report regarding the appropriate long-term rates that should be provided to all-electric residential customers of FirstEnergy. The Commission further directed that the Staff provide a

range of options regarding proposed rates and discounts for all-electric residential customers and that each option be supported by a thorough statistic analysis, including the bill impact upon all-electric customers at various levels of consumption and the number of all-electric residential customers at each consumption level.

On September 24, 2010, the Staff filed its report as directed by the Commission. The Staff's Report outlined six different options for the reduction or elimination of the discounts provided to all-electric customers as well as the bill impacts for each option.

Constellation has business interests in the State that will be affected by the outcome of the proceeding. As a supplier of electric power and energy in the State, Constellation has an interest in the instant proceeding as the Commission will assess the Staff Report's six different options. The Commission's assessment of those six options and other related decisions may affect the viability of the competitive electric market in Ohio in which CNE is a supplier of electric power and energy to retail customers.

This motion is being filed prior to the November 1 deadline established in the October 8, 2010 Entry. Thus, the intervention is timely and should not unduly delay the instant proceedings. Because of its unique expertise and participation in the competitive retail and wholesale markets in Ohio and across the country, Constellation will be able to assist in the development of a full and complete record to assist the Commission in its consideration of the Application.

WHEREFORE, Constellation respectfully requests that the Commission grant this motion for leave to intervene and that CNE be made a full party of record. For purposes of receiving service in the proceeding, in addition to the undersigned, Constellation requests that the following persons be placed on the official service list:

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Respectfully Submitted,



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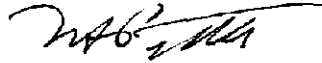
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 15<sup>th</sup> day of October, 2010 by electronic mail, upon the persons listed below.



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