

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|--|---|------------------------|
| In the Matter of the Application of the Ohio |) | Case No. 07-551-EL-AIR |
| Edison Company, The Cleveland Electric |) | Case No. 07-552-EL-ATA |
| Illuminating Company, and The Toledo |) | Case No. 07-553-EL-AAM |
| Edison Company, for Authority to Increase |) | Case No. 07-554-EL-UNC |
| Rates for Distribution Service, Modify |) | |
| Certain Accounting Practices and For Tariff |) | |
| Approvals |) | |
| |) | |

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

Now comes Constellation NewEnergy, Inc. (“Constellation”), 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 Cynthia A. Fonner, in-house counsel for Constellation, has been filed in the above styled proceeding. Constellation asks that if approved she be added to the service list, as well as Terry Harvill and David Fein, who are representative corporate officers. Contact information for the additional counsel and corporate representatives 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,

/s/

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**MEMORANDUM IN SUPPORT FOR THE INTERVENTION 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 ("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 NewEnergy, Inc. ("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 over 15,000 megawatts of load and over 10,000 customers. Constellation 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. Constellation currently provides service to retail electric customers in northern Ohio.

On May 8, 2007, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”) filed a notice of intent to file an application for an increase in electric distribution rates. On June 7, 2007, FirstEnergy filed its Application to increase electric distribution rates and to modify the rate design. On August 1, 2007, the Commission issued an Entry accepting the Application for filing as of June 7, 2007, and approving the newspaper notice for publication.

Constellation has business interests in the State that will be affected by the outcome of the proceeding, including but not limited to its role as supplier of electric power and energy to retail customers.

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 markets in Ohio and other states, 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 Constellation 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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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 31st day of August, 2007 by regular U.S. mail, postage prepaid, and, where indicated, by electronic mail, upon the persons listed below.

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