

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of the
East Ohio Gas Company d/b/a Dominion
East Ohio for Approval of a General
Exemption of Certain Natural Gas
Commodity Sales Services or Ancillary
Services.

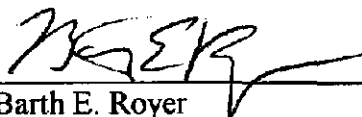
Case No. 07-1224-GA-EXM

MOTION TO INTERVENE OF MXENERGY INC.

MXenergy Inc. ("MXenergy"), a Commission-certified supplier of competitive retail natural gas service, hereby moves to intervene in the above-entitled proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code ("OAC"). As more fully discussed in the accompanying memorandum, MXenergy has a real and substantial interest in this proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Further, MXenergy's participation in this proceeding will contribute to a just and expeditious resolution of the issues involved, and will not unduly delay the proceeding or unjustly prejudice any existing party.

WHEREFORE, MXenergy respectfully requests that its motion to intervene be granted.

Respectfully submitted,



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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the	:	
East Ohio Gas Company d/b/a Dominion	:	
East Ohio for Approval of a General	:	Case No. 07-1224-GA-EXM
Exemption of Certain Natural Gas	:	
Commodity Sales Services or Ancillary	:	
Services.	:	

MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE OF MXENERGY INC.

By the above-styled application, the East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") seeks approval of exemptions from certain provisions of the Ohio Revised Code to permit DEO to implement Phase 2 of its plan to exit the merchant function. *See Dominion East Ohio*, Case No. 05-474-GA-ATA. As a part of its application, DEO seeks authority to conduct auctions for Standard Service Offer ("SSO") and Standard Choice Offer ("SCO") commodity sales services, with the winning competitive retail natural gas service ("CRNGS") suppliers in the SCO auction to be awarded the right to serve specific Choice-eligible customers, as opposed to the tranches of wholesale load awarded to winning wholesale suppliers in the SSO auction.

Section 4903.221, Revised Code, provides that any "person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding." As a CRNGS provider currently operating on DEO's system, and as a potential bidder in both the proposed SSO and SCO auctions, MXenergy clearly may be adversely affected if the processes and procedures ultimately approved by the Commission in this case are not structured to create and sustain a more competitive commodity market in the area served by DEO. Moreover, not

only does MXenergy satisfy the underlying statutory test, but it also satisfies the standards governing intervention set forth in the Commission's rules.

Rule 4901-1-11(A), OAC, provides, in pertinent part, as follows:

(A) 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 ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As a CRNGS supplier, MXenergy plainly has a real and substantial interest in a proceeding that will impact a market in which it must compete. At this juncture, none of the pending motions to intervene in this proceeding have been granted. Thus, by definition, no existing parties adequately represent MXenergy's interest.

Although MXenergy does not believe this to be a close question, each of the specific considerations that the Commission, pursuant to Rule 4901-1-11(B), OAC, must take into account in applying the Rule 4901-1-11(A)(2), OAC, standard also fully support granting MXenergy's motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case shall consider:

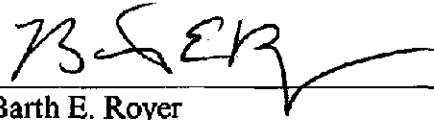
- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

(5) The extent to which the person's interest is represented by existing parties;

First, as previously explained, MXenergy's interest in connection with the proposals contained in DEO's application is obviously direct and substantial. Second, although MXenergy must necessarily await further developments before determining the specific positions it will adopt with respect to the issues in this proceeding, MXenergy will certainly advocate that the processes and procedures ultimately adopted as a result of this application be structured in a manner that does not hinder the development of effective retail competition in DEO's service area. Third, in view of the fact that the proceeding has just commenced, granting MXenergy's motion to intervene will not unduly delay or prolong the proceeding. Fourth, MXenergy has been a frequent participant in cases involving the establishment of competitive gas markets in Ohio (including Case No. 05-474-GA-ATA) and the numerous other states in which it does business. Thus, MXenergy will bring substantial experience to bear on the issues raised. Finally, not only are there no existing parties that represent MXenergy's interest, but it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings" (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2) to apply the Rule 4901-1-11(B)(5) standard in a manner that would favor certain CRNGS providers and potential bidders over others. Thus, granting MXenergy intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

WHEREFORE, MXenergy respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,

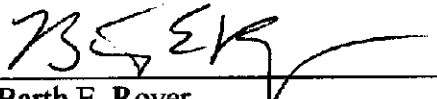
A handwritten signature in black ink, appearing to read "B. E. Royer", with a long horizontal stroke extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 16th day of January 2008.


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