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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo)
Edison Company for Approval of an) Case Nos. 09-541-EL-ATA
Experimental Critical Peak Pricing Rider,)
a revised Generation Service Rider which)
includes a Time-of-Day Option, and an)
Experimental Real Time Pricing Rider)

**MOTION FOR LEAVE TO INTERVENE OF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.**

Now come Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (jointly "Constellation"), who, pursuant to Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, move for intervention in the above-styled proceeding as full parties of record. The reasons supporting the intervention are contained in the accompanying Memorandum in Support.

By separate motion, request for admission *Pro Hac Vice* for Cynthia A. Fonner, 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 joint motion for leave to intervene and that Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. each be made a full party of record.

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Respectfully Submitted,



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**MEMORANDUM IN SUPPORT OF
THE MOTION TO INTERVENE OF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, 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 NewEnergy, Inc. ("CNE") provides electricity and energy-related services to retail customers in Ohio as well as in 15 other states, and the District of Columbia and serves more than 14,000 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 Ohio.

Constellation Energy Commodities Group, Inc. (“CCG”) provides wholesale power and risk management services to wholesale customers (distribution utilities, co-ops, municipalities, power marketers, utilities and other large load serving entities), throughout the United States in both regulated and deregulated energy markets. CCG is active in the PJM Interconnection, L.L.C. and Midwest Independent System Operator (“MISO”) wholesale power markets and has sold power for wholesale delivery in Ohio. CCG is also one of the suppliers providing full requirements service to Standard Service Offer customers of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, “FirstEnergy”) under the recent descending clock auction. CNE and CCG are subsidiaries of Constellation Energy Group, Inc.

In the instant matter, FirstEnergy filed an application (the “Application”) a proposing (i) Experimental Critical Peak Pricing Rider, (ii) revised Generation Service Rider which includes a Time-of-Day Option, and (iii) Experimental Real Time Pricing Rider for its operating companies. 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 assesses proposed products to be offered to FirstEnergy supply customers, and makes other decisions that will affect the viability of the competitive electric market in Ohio in which CCG provides electric power and other products and services to wholesale customers and in which CNE is a 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.

WHEREFORE, Constellation respectfully requests that the Commission grant this joint motion for leave to intervene and that CNE and CCG each 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 24th day of July, 2009 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



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