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Public Utilities Commission of Ohio

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of)
Northeast Ohio Natural Gas Corporation,)
Ohio Intrastate Gas Transmission)
Company, and Marbel Energy Corporation)
for Approval of the Change of Control of)
Northeast Ohio Natural Gas Corporation)
and Ohio Intrastate Gas Transmission)
Company.)

Case No. 96-56-GA-UNC

In the Matter of the Application of MB)
Operating Company, Inc., for a Finding that)
it is not a Public Utility and that it should be)
Relieved from Jurisdiction under Section)
4905.03(A)(6), Revised Code.)

Case No. 96-60-GA-ARJ

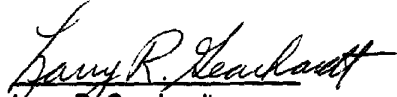
MOTION FOR LEAVE TO FILE AN APPLICATION
FOR REHEARING BY THE OHIO FARM BUREAU FEDERATION

Now comes the Ohio Farm Bureau Federation (OFBF), by its attorney, which respectfully moves for leave to file an application for rehearing in the above-referenced matters. The issue considered by the Commission in its May 30, 1996, Entry was not originally of interest to OFBF. However, in its Entry, Finding (16), the Commission dealt with the contractual relationships between gas producers and property owners, an area in which OFBF has great interest. Further, there was just cause for OFBF not to enter an appearance prior to May 30, 1996. OFBF, as detailed in the attached memorandum, submits that we have met the test of Section 4903.10, Revised Code.

WHEREFORE, OFBF respectfully request that it be granted leave to file an application for rehearing from the May 30, 1996 Entry in these cases.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician *[Signature]* Date Processed *July 4, 1996*

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Section 4903.10, Revised Code provides that before leave to file an application for rehearing is granted to a person who did not enter an appearance in the proceeding, the Commission must find that the Applicant's failure to enter an appearance prior to the journalization of the Entry was due to just cause and that the Applicant's interest was not adequately considered. Ohio Farm Bureau Federation submits that it meets both tests and respectfully requests leave to file an application for a rehearing.

The Ohio Farm Bureau Federation and the 180,000 members it represents have a vital interest in this case. OFBF is filing this motion and application for rehearing to protect its members' interests. Ohio Farm Bureau Federation is a federation of local farm bureaus in all of Ohio's 88 counties; it is the largest voluntary nonprofit general farm organization in this state. Formed to promote, protect, and represent the business, property, economic, social, and educational interest of farmers across Ohio and agriculture in general, its members produce virtually every kind of agricultural

commodity found in the Midwest United States.

The ability of our members to produce these commodities stems directly from the private ownership of land. Theodore Roosevelt wisely observed that "property rights must be carefully safeguarded; ordinarily and in the great majority of cases, human rights and property rights are fundamentally and in the long run identical". Inherent in the private ownership of land is the ability to make real estate transactions affecting one's real property. The Ohio Farm Bureau is intensely interested in any potential interference with these rights. The decision of the Commission in the May 30, 1996, Entry, Finding (16) constitutes precisely such interference.

Many of the 180,000 members of the Ohio Farm Bureau have entered into contractual relationships with various oil and gas producers. OFBF frequently advises members to negotiate contracts with oil and gas producers to lease mineral interests as well as right-of-way agreements for the laying of gathering lines or field lines on their property. As part of the negotiations, property owners demand the right to physically connect with such gathering lines and receive gas from the gas gathering system. The property owners require this right as a condition for entering into a lease or granting a right-of-way easement. For decades, the General Assembly, the Ohio Supreme Court and the Commission have recognized that this is an integral part of a real estate transaction and, further, this practice of granting property owners the right to tap-in and take gas is reasonable and necessary if property owners are to enter into leases or grant right-of-way easements and oil and gas production is to be expanded throughout the state of Ohio.

The Ohio Farm Bureau has an interest assuming that practice is continued. This interest was not adequately considered in these proceedings. The failure to consider this interest resulted in that interest being affected adversely by the language contained in Finding (16) of the May 30, 1996, Entry. That language required MB, a producer, to make arrangements with one or more natural gas companies to deliver any natural gas to end-users in excess of the amount reserved in the lease. The effect of this language is to have the Commission assert jurisdiction over a real estate transaction. This is clearly beyond the purview of the authority of the Commission.

There was just cause for the Ohio Farm Bureau Federation not entering an appearance prior to May 30, 1996. The parties in this case did not request the Commission to assert jurisdiction over lease or right-of-way contracts. The Stipulation between the parties did not include any recommendation that the Commission expand its jurisdiction.

It was only after the Entry was journalized on May 30, 1996, that the Ohio Farm Bureau Federation discovered what the Commission had done. The Commission in its language at Finding (16) required MB, a gas producer, to make arrangements with a natural gas company to deliver gas to end-users in excess of the amounts reserved in the lease. Such a modification is unreasonable and unlawful as outside the statutory jurisdiction of the Commission.

The interests of the Ohio Farm Bureau Federation and its 180,000 members could not have reasonably been anticipated to be at risk until the Commission issued its May 30, 1996, Entry. This sole avenue to protect these interests now is to file an

application for rehearing.

The Ohio Farm Bureau Federation submits that it has met the two-part test of Section 4903.10, Revised Code and respectfully requests leave to file its application for rehearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing of the Ohio Farm Bureau was served upon Sheldon A. Taft, Esq., Vorys, Sater, Seymour and Pease, 52 E. Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, counsel for Northeast Ohio Natural Gas Corp., And MB Operating Co., Inc., and upon Paul T. Ruxin, Esq. Jones, Day, Reavis & Pogue, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114 and Helen L. Liebman, Esq., Jones, Day, Reavis & Pogue, 1900 Huntington Center, Columbus, Ohio 43215, and William S. Newcomb, Jr., Esq., Vorys, Sater, Seymour and Pease, 52 E. Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, counsel for The Ohio Oil & Gas Association, Medina Fuel Co. (MFC Drilling) Altheriers Oil, Inc., Bakerwell, Inc., Cameron Drilling Co. Inc., Carlton Oil Corp., Franklin Gas & Oil Co. Inc., GonzOil, Inc., Heinrich Enterprises, Lomak Petroleum, Inc., Mason Producing, Inc., Mutual Oil & Gas Company, The Oxford Oil Company, and Reliance Energy, Inc., this 28th day of June, 1996 by regular U.S. mail, postage prepaid.


Larry R. Gearhardt

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