

April 28, 2009

Via E-Docket

Ms. Mary Jo. Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Re: In the matter, on the Commission's own motion, to initiate a contested case proceeding involving Consumers Energy Company, Michigan Consolidated Gas Company, Michigan Gas Utilities Corporation, and SEMCO Energy Gas Company to investigate whether any clarifications, revisions, or additions should be made to certain approved gas customer choice tariffs. MPSC Case No. U-15929

Dear Ms. Kunkle:

Enclosed for filing in the above-referenced case is the *Petition to Intervene of Constellation NewEnergy-Gas Division, LLC* and *Appearance of John M. Dempsey on Behalf of Constellation NewEnergy-Gas Division, LLC*.

If you have any questions, please contact me.

Very truly yours,

John M. Dempsey

JMD:jkt
Enclosure

LANSING 34885-1 425140

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission’s own motion,)
to initiate a contested case proceeding involving)
Consumers Energy Company, Michigan)
Consolidated Gas Company, Michigan Gas)
Utilities Corporation, and SEMCO Energy Gas)
Company to investigate whether any clarifications,)
revisions, or additions should be made to certain)
approved gas customer choice tariffs.)
_____)

Case No. U-15929

PETITION TO INTERVENE OF
CONSTELLATION NEWENERGY-GAS DIVISION, LLC

Constellation NewEnergy-Gas Division, LLC (“Constellation”), by its counsel, respectfully submits this petition to intervene in this case pursuant to Rule 201(1) of the Rules of Practice and Procedure of the Commission, 1992 ACS, R460.17201(1).¹ In support of the petition, Constellation states as follows:

1. Constellation is a Kentucky limited liability company authorized to do business in the State of Michigan and is a subsidiary of the Constellation Energy Group. Constellation is a full service provider of natural gas supply and transportation-related services. Nationwide, Constellation serves more than 3,000 large commercial, industrial, municipal, LDC, and power generation facilities that annually consume more than 350 bcf of natural gas. Constellation has

¹ Rule 201(1) states that “[a] person who is not a complainant, respondent, protestant, applicant, or staff, as defined in these rules, and who claims an interest in a proceeding may petition for leave to intervene.” Rule 201(1) further states that a petition that is not filed in a timely manner “may be granted upon a showing of good cause and a showing that a grant of the petition will not delay the proceeding or unduly prejudice any party to the proceeding. Except for good cause, an intervenor whose petition is not filed in a timely manner, but who is nevertheless granted leave to intervene, shall be bound by the record and procedural schedules developed before the granting of leave to intervene.”

served Michigan transportation gas customers for many years. This experience was one of the factors cited by the Commission in its order issued on June 15, 2006 in Case No. U-14867 granting Constellation a license to operate as an alternative gas supplier ("AGS") in Michigan pursuant to 2002 PA 634 (Act 634), MCL 460.9 et seq. ("Staff further observed that Constellation NewEnergy presently serves Michigan transportation gas customers and has successfully done so for many years." p. 2).² Constellation's affiliate company has been licensed as an alternative electric supplier (Case No. U-13660) in the Michigan electric choice markets since December 20, 2002.

2. On April 16, 2009, the Commission issued an order commencing a contested case proceeding in this docket to investigate whether any clarifications, revisions, or additions should be made to certain approved gas customer choice tariffs. Such potential revisions include, e.g., tariff provisions governing Supplier Registration and Code of Conduct. It also appears that an issue to be addressed is "whether an AGS may require a customer to pay a termination fee before returning the customer to system supply." (p. 7)

3. The Commission has called for wide participation in this docket: "In addition to the regulated gas utilities with gas choice customers, all other interested persons are invited to recommend changes to the sections of the gas customer choice tariffs specifically identified above that they believe are in the public interest." (p. 7) The Commission also directed the four utilities named in the caption of this docket to "serve notice of this proceeding on all intervenors in their most recent general rate case." (p. 9)

² As recognized in the Commission's order of April 16, 2009 in Case No. U-13823, Constellation serves former customers of Cornerstone Energy, Inc., d/b/a Cornerstone Energy Marketing, Inc.

4. Constellation was granted party status as an intervenor in Michigan Gas Utilities Corporation's last rate case, Docket No. U-15549.

5. As an AGS licensed to do business in Michigan, Constellation is interested in and affected by any modifications that the Commission might consider and approve to the choice program and related tariffs.

6. Accordingly, Constellation is directly affected by the matters identified in the Commission's order opening this contested case docket. Constellation, as a current and potential provider of gas transportation and AGS services in Michigan, has a direct interest in the matters raised in this proceeding, and sufficient grounds exist to permit Constellation's intervention.

7. Constellation is a "party," as defined in the Administrative Procedures Act, since it is "a person ... properly seeking and entitled of right to be admitted, as a party in a contested case." MCL 24.205(5). Accordingly, Constellation has statutory rights to receive, *inter alia*, "an opportunity for a hearing," MCL 24.271(1), and "an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact," MCL 24.271(3).

8. As a transportation customer and licensed AGS, Constellation has an interest in the implementation of rates, tariffs, operating procedures, standards of conduct, rules, and policies that will ensure the development and maintenance of an efficient, reliable, and price competitive gas market in Michigan. Constellation's current and potential customers are commercial and industrial customer segments. Constellation's licenses and its ability to participate in a competitive retail gas market in Michigan will be affected by the outcome of this proceeding. As such, the issues to be addressed in this proceeding could have a direct and substantial impact upon Constellation's licenses and on its ability to serve commercial and

industrial customers in Michigan. As a licensed AGS with its own distinct property interests, Constellation's interests in this proceeding cannot be adequately represented or protected by any other party.

9. Any change in utility tariffs, rules, regulations, and rate schedules arising from Commission orders in this case can create an injury in fact for Constellation and its customers.

10. This Commission recognizes two bases for intervention by parties in contested case proceedings. The first type of intervention is where the party has standing to intervene as of right, which requires that the party: (i) will have suffered an injury-in-fact as a result of the outcome of the case; and (ii) be within the “zone of interest” to be protected by statute. *In re Michigan Consolidated Gas Company*, Case No. U-9138 (November 10, 1988). The second type of intervention is permissive, where the Commission has the discretion to permit a party to intervene in the case where that party can provide useful information to the Commission or unique perspective on the issues to be resolved in the case. Constellation meets either test.

11. Constellation meets the test for intervention as of right since it is a customer under utility tariffs and because Constellation's Choice service and its Choice customers are also customers who will be affected by the outcome of this proceeding. Both Constellation and its customers are subject to rules, regulations, and tariffs that may be changed as an outcome of this proceeding. In other words, Constellation and its customers will suffer an injury in fact, depending on the content of any order resulting from these proceedings, and are certainly within the “zone of interest” to be protected by the statutes cited *supra*.

12. Alternatively, Constellation should be allowed permissive intervention based on its ability to present the interests of an AGS provider in Michigan, its participation in other states

on issues involved here, and because its perspective is unique and is not directly represented by any other party to this matter.

13. For purposes of the service list, the name and address of additional persons to whom correspondence, communications, and filings regarding this proceeding should be served are:

Richard Haubensak
Consultant
Constellation NewEnergy-Gas Division, LLC
12120 Port Grace Boulevard, Suite 200
LaVista, NE 68128
Phone: 402-829-3966
richard.haubensak@constellation.com

WHEREFORE, Constellation prays that this Petition to Intervene be granted and that it be treated as a party to this proceeding.

Respectfully submitted,

DICKINSON WRIGHT PLLC
Counsel for Constellation NewEnergy-Gas Division, LLC

By: _____
John M. Dempsey (P30987)
215 S. Washington Square, Suite 200
Lansing, MI 48933
(734) 623-1619

Dated: April 28, 2009

LANSING 34885-1 425118v1

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH
PUBLIC SERVICE COMMISSION

ENTRY OF APPEARANCE IN AN ADMINISTRATIVE HEARING

This form is issued as provided for by 1939 PA 3, as amended, and by 1933 PA 254, as amended. The filing of this form, or an acceptable alternative, is necessary to ensure subsequent service of any hearing notices, Commission orders, and related hearing documents.

General Instructions:

Type or print legibly in ink. For assistance or clarification, please contact the Public Service Commission at (517) 241-6170.

Please Note: The commission will provide service of documents in this proceeding to only one person for each party.

THIS APPEARANCE TO BE ENTERED IN ASSOCIATION WITH THE ADMINISTRATIVE HEARING:

Case / Company Name: Commission's Own Motion Docket No. U-15929

Please enter my appearance in the above-entitled matter on behalf of:

1. (Name)	<u>Constellation NewEnergy-Gas Division, LLC</u>
2. (Name)	<u></u>
3. (Name)	<u></u>
4. (Name)	<u></u>
5. (Name)	<u></u>
6. (Name)	<u></u>
7. (Name)	<u></u>

Name John M. Dempsey

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Email jdempsey@dickinsonwright.com

Date 04/28/2009

Signature:

I am not an attorney

I am an attorney whose:

Michigan Bar # is P- 30987

Bar # is:
(state)