

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of )  
Ohio Edison Company, The Cleveland )  
Electric Illuminating Company, and )  
The Toledo Edison Company for )  
Authority to Establish a Standard )  
Service Offer Pursuant to )  
Section 4928.143, Revised Code in the )  
Form of an Electric Security Plan. )

Case No. 08-935-EL-SSO

REPLY OF CONSTELLATION NEWENERGY, INC.,  
CONSTELLATION ENERGY COMMODITIES GROUP, INC.,  
DIRECT ENERGY SERVICES, LLC AND  
INTEGRYS ENERGY SERVICES, INC. TO THE SEPTEMBER 2, 2008  
MEMORANDUM CONTRA OF FIRSTENERGY SERVICE COMPANY

Pursuant to the August 5, 2008 Entry in this matter, Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., Direct Energy Services, LLC and Integrys Energy Services, Inc. ("Competitive Suppliers") respectfully submit this reply to the September 2, 2008 Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company ("FirstEnergy").

I. Background

On August 5, 2008, the Attorney Examiner set this matter for hearing on October 2, 2008. A procedural schedule was set forth with intervenor testimony being due on September 15, 2008, Staff testimony by September 22, 2008, and discovery requests except for notices of deposition to be served by September 19, 2008. On August 25, 2008, the Ohio Office of Consumers' Counsel, the City of Toledo/NOAC, Lucas County/NOAC, and the Ohio Environmental Counsel filed a Joint Motion seeking a sixty day continuance of the hearing and other procedural deadlines. The Movants ask that the Commission schedule the hearing for December 1 instead of October 2. The Joint

Movants asked for additional time to prepare to properly litigate the case given the fact that it affected 1.9 million residential customers. As an alternative, the Joint Movants requested that if the Commission determines not to grant the sixty day extension in continuance, they would ask for a fifteen day continuance with intervenor testimony being due on October 3, discovery closing on October 8, and a hearing commencing on October 30.

On September 2, 2008, FirstEnergy filed a Memorandum Contra to the Joint Motion for an extension. FirstEnergy cited the General Assembly's 150 day deadline and the fact that OCC could have submitted discovery requests earlier in the month of August as reasons for denying any requested continuance. On September 2, 2008, Nucor Steel Marion, Inc. filed a Memorandum supporting the OCC motion to continue the hearing date and extend the discovery and testimony deadlines by fifteen days.

## **II. Argument**

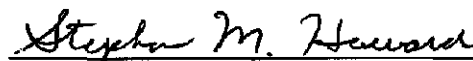
The Competitive Suppliers recognize that the General Assembly has given the Commission a 150 day deadline which requires that the hearing process be compressed. However, this case involves billions of dollars, millions of customers, and very significant policy decisions. It is essential that the Commission establish a procedural schedule so that a meaningful opportunity to be heard by stakeholders can be provided. As a practical matter the Commission is limited in making its decision to the quality of the record presented to it. The Application in the matter at bar is more than two thousand pages and involves facts and data known only to FirstEnergy. Thus, in particular more time is needed for the development of intervenor testimony. Hopefully, additional time in

discovery and preparation will result in time saved at hearing and a clear record for the Commission to consider.

While the Competitive Suppliers believe that the sixty days requested by the Joint Movants have merit, it will leave precious little time after the hearing for the Commission to consider the record and render a decision within statutorily mandated 150 days. The same is not true though for a fifteen day extension of all deadlines in this case.

Thus, the Competitive Suppliers support OCC's alternative and propose that the deadline for filing intervenor testimony be extended by fifteen days from September 15 to September 30. The deadline for discovery except for notices of deposition should be extended from September 19 to Monday, October 6. The Staff testimony deadline should be extended from September 22 until October 7. Finally, the hearing date should commence on October 17 instead of October 2. Good cause exists for OCC's requested fifteen day extension, and the Commission should grant a fifteen day extension of the deadlines set forth above.

Respectfully submitted,

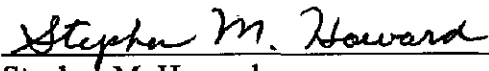


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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 5th day of September, 2008 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.

  
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