

**FILE**

6  
RECEIVED-DOCKETING DIV  
2009 APR 13 AM 10:15  
PUCO  
BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The )  
Dayton Power & Light Company For )  
Approval of its Electric Security Plan )

Case No. 08-1094-EL-SSO

**REPLY BRIEF OF  
CONSTELLATION NEWENERGY, INC.**

Constellation NewEnergy, Inc. ("CNE") is a competitive retail electric supply provider ("CRES") certificated to conduct retail sales of electricity in Ohio. CNE has conducted retail sales of electricity in Ohio since 2001 and continues to do so to this day. CNE has been an active participant in all of the rule making procedures to implement Senate Bill 221 as well as the electric security plan proceedings including the matter at bar. CNE strongly believes that the best way to achieve the State's Energy Policy Goals established in Section 4928.02, Revised Code is provide customers with the maximum number of options to procure energy and to remove rate designs or overt subsidies which form barriers to a retail customers being able to select the most efficient source and supply of electricity.

On February 23, 2009 CNE signed the Stipulation in the matter at bar. It did so because it believes that taken as a whole the Stipulation is in the best interest of the public. The Stipulation is a consensus document reached as the result of a series of negotiated compromises by all the signatory parties. The fact that the Stipulation is a compromise and not an expression of policy by the Signatory Parties is embodied in Paragraph 35 of the Stipulation. Paragraph 35 contains the standard language for Commission stipulations noting that stipulations cannot be used to establish precedent

**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 TM Date Processed 4/13/2009**

and that when a party signs a stipulation it is understood that the signatory party is not approving of each and every provision contained in the stipulation. This concept is specifically expressed in Paragraph 35 of the Stipulation in the matter at bar which states in part:

This Stipulation is a consensus among the Signatory Parties of an overall approach to rates. It is submitted for the purposes of this case along and should not be understood to reflect the positions that an individual Signatory Party may take as to any individual provision of the Stipulation standing alone, nor the position a Signatory Party may have taken if all of the issues in this proceeding had been litigated.” (emphasis added)

On page 12 of its Initial Brief the Applicant, The Dayton Power & Light Company (“DP&L”), states that “Representatives of all of DP&L’s customer groups (residential, low-income, commercial and industrial) and CRES providers have signed the Stipulation, demonstrating the reasonableness of the RSC.” (emphasis added) Given the language of paragraph 35, it was entirely inappropriate for DP&L to conclude that any signatory party specifically supports the Rate Stabilization Charge let alone any other single provision standing alone. CNE has consistently argued before this Commission against the imposition of non bypassable generation-related charges since they act as barrier to the development of retail competition. CNE’s support for the Stipulation and signature on the Stipulation cannot and should not be interpreted as support for the imposition of non bypassable rate stabilization charges. CNE remains a signatory party and does support Commission adoption of the Stipulation as written, but it is not an accurate statement to state that it supports the Rate Stabilization Charge provision of the Stipulation.

Respectfully Submitted,

CONSTELLATION NEWENERGY, INC.

By:   
M. Howard Petricoff (0008287)

VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P. O. Box 1008  
Columbus, Ohio 43216-1008  
Tel. (614) 464-5414  
Fax (614) 464-6350  
E-mail: [mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)

Attorneys for Constellation NewEnergy, Inc

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 13<sup>th</sup> day of April, 2009 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



---

M. Howard Petricoff  
Stephen M. Howard

Judi L. Sobecki  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
[judi.sobecki@dplinc.com](mailto:judi.sobecki@dplinc.com)

John W. Bentine  
Mark S. Yurick  
Matthew S. White  
Chester, Willcox & Saxbe, LLP  
65 East State Street, Ste. 1000  
Columbus, OH 43215-4213  
[jbentine@cwsllaw.com](mailto:jbentine@cwsllaw.com)  
[myurick@cwsllaw.com](mailto:myurick@cwsllaw.com)  
[mwhite@cwsllaw.com](mailto:mwhite@cwsllaw.com)

Henry W. Eckhart  
50 West Broad Street, Ste. 2117  
Columbus, OH 43215  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street, P.O. Box 1793  
Findlay, OH 45839-1793  
[drinebolt@aol.com](mailto:drinebolt@aol.com)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

Charles J. Faruki  
Jeffrey S. Sharkey  
Faruki Ireland & Cox P.L.L.  
500 Court House Plaza S.W.  
10 North Ludlow Street  
Dayton, OH 45402  
[cfaruki@ficlaw.com](mailto:cfaruki@ficlaw.com)  
[jsharkey@ficlaw.com](mailto:jsharkey@ficlaw.com)

Samuel C. Randazzo  
Lisa G. McAlister  
Joseph M. Clark  
McNees, Wallace & Nurick, LLC  
21 East State Street, 17<sup>th</sup> Fl.  
Columbus, OH 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[lmcalister@mwncmh.com](mailto:lmcalister@mwncmh.com)  
[jclark@mwncmh.com](mailto:jclark@mwncmh.com)

Robert Ukeiley  
435 R Chestnut Street, Ste. 1  
Berea, KY 40403  
[rukeiley@igc.org](mailto:rukeiley@igc.org)

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 E. Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mikurtz@BKLawfirm.com](mailto:mikurtz@BKLawfirm.com)

Jacqueline Lake Roberts / Ann Hotz  
Michael E. Idzkowski / Rick Reese  
Gregory J. Poulos  
Assistant Consumers' Counsel  
Office of Consumers' Counsel  
10 West Broad Street, Ste. 1800  
Columbus, Ohio 43215-3485  
[roberts@occ.state.oh.us](mailto:roberts@occ.state.oh.us)  
[hotz@occ.state.oh.us](mailto:hotz@occ.state.oh.us)  
[idzkowski@occ.state.oh.us](mailto:idzkowski@occ.state.oh.us)  
[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)

Richard L. Sites  
Ohio Hospital Association  
155 East Broad Street, 15<sup>th</sup> Floor  
Columbus, OH 43215-3620  
[ricks@ohanet.org](mailto:ricks@ohanet.org)

Craig I. Smith  
Attorney at Law  
2824 Coventry Road  
Cleveland, OH 44120  
[Wis29@yahoo.com](mailto:Wis29@yahoo.com)

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

Christopher L. Miller  
Gregory H. Dunn  
Andre T. Porter  
Nell B. Chambers  
Schottenstein Zox & Dunn Co., LPA  
250 West Street  
Columbus, OH 43215  
[cmiller@szd.com](mailto:cmiller@szd.com)  
[gdunn@szd.com](mailto:gdunn@szd.com)  
[aporter@szd.com](mailto:aporter@szd.com)

David I. Fein  
Cynthia A. Fonner  
550 W. Washington Blvd., Suite 300  
Chicago, IL 60661  
[david.fein@constellation.com](mailto:david.fein@constellation.com)  
[cynthia.a.fonner@constellation.com](mailto:cynthia.a.fonner@constellation.com)

Tasha Hamilton  
Constellation Energy Group, Inc.  
111 Market Place, Ste. 600  
Baltimore, MD 21202  
[tasha.hamilton@constellation.com](mailto:tasha.hamilton@constellation.com)

Larry Gearhardt  
Chief Legal Counsel  
Ohio Farm Bureau Federation  
280 North High Street  
P.O. Box 182383  
Columbus, OH 43218-2383  
[lgearhardt@ofbf.org](mailto:lgearhardt@ofbf.org)

Barth E. Royer  
Bell & Royer Co. LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927  
[BarthRoyer@aol.com](mailto:BarthRoyer@aol.com)

Nolan Moser  
Trent A. Dougherty  
Evan Eschmeyer  
The Ohio Environmental Council  
1207 Grandview Avenue  
Suite 201  
Columbus, OH 43212-3449  
[nmoser@theOEC.org](mailto:nmoser@theOEC.org)  
[trent@theOEC.org](mailto:trent@theOEC.org)  
[eeschmeyer@elpc.org](mailto:eeschmeyer@elpc.org)

Gary A. Jeffries  
Dominion Resources Services  
501 Martindale St., Suite 400  
Pittsburgh, PA 15212-5817  
[Gary.A.Jeffries@dom.com](mailto:Gary.A.Jeffries@dom.com)

Todd Williams  
4534 Douglas Road  
Toledo, OH 43613  
[williams.toddm@gmail.com](mailto:williams.toddm@gmail.com)

Ellis Jacobs  
Advocates for Basic Legal Equality, Inc.  
333 W. First St., Suite 500B  
Dayton, OH 45402  
[ejacobs@ablelaw.org](mailto:ejacobs@ablelaw.org)

Thomas Lindgren  
Thomas McNamee  
Assistant Attorneys General  
Public Utilities Section  
180 E. Broad St., 9<sup>th</sup> Floor  
Columbus, OH 43215  
[Thomas.Lindgren@puc.state.oh.us](mailto:Thomas.Lindgren@puc.state.oh.us)  
[Thomas.McNamee@puc.state.oh.us](mailto:Thomas.McNamee@puc.state.oh.us)