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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. 10-388-EL-SSO

TRIAL BRIEF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.

Now come Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (jointly "Constellation"), and pursuant to the procedural schedule established by the Attorney Examiners submit their trial brief in the above styled docket. Constellation appears as a full party of record in this proceeding by virtue of the Entry of March 24, 2010 which granted intervention to all parties of record in the FirstEnergy Market Rate Option proceeding Case No. 09-906-EL-SSO ("MRO").¹ In addition, Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. are signatory parties to the Stipulation submitted on March 23, 2010 and which serves as the basis for the application for a second Electric Security Plan ("ESP"). In the interests of judicial economy, the Attorney Examiners by Entry dated April 6, 2010 took judicial notice of the testimony and evidence in the MRO proceeding.

The application for a Market Rate Option in Case No. 09-906-EL-SSO basically was built upon the successful wholesale electric supply auction conducted as part of Cleveland Electric

¹ This included admission *Pro Hac Vice* for Cynthia Fonner Brady, Senior Counsel for Constellation to participate as counsel in this proceeding.

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Illuminating, Ohio Edison, and Toledo Edison's ("FirstEnergy") first ESP auction procurement plan approved in Case No. 08-935-EL-SSO. The MRO application incorporated most of the provisions of the Case 08-935-EL-SSO Master Supply Agreement, maintained the full requirements nature of the auction, used the descending clock auction mechanism and kept the slice of the system allocation method for pairing the standard service load with the winning suppliers' energy. Constellation was an active participant in the 08-935-EL-SSO proceeding and Constellation Energy Commodities Group was a winning supplier in the May 2009 auction.

Constellation Suggested Revisions To The Auction

When FirstEnergy filed for its MRO in Case No. 09-906-EL-SSO, Constellation intervened and called its Vice President of Energy Policy, David I. Fein, to testify as a witness. Mr. Fein testified as to the strengths of the May 2009 auction and the components of that auction that should be maintained. He also provided a number of revisions that would improve both the wholesale auction and the ongoing retail market in FirstEnergy's service area.² One of Mr. Fein's proposals to make a more robust wholesale market was to institute changes to the credit requirements for potential suppliers which were consistent with the credit requirements adopted in the Commonwealth of Pennsylvania for several utilities.³ Certain of those changes to the credit requirements have been adopted as part of the Stipulation (See Addendum C revising Section 6.6 of the Master Supply Agreement).

Mr. Fein also proposed two changes to ensure the continued growth of the competitive retail market. He proposed making Rider GCR, which exists today as a non bypassable rider, fully bypassable for customers who shop. Rider GCR is designed to true up generation costs and pay for the auction and as such is a competitive service pursuant to Section 4928.03, Revised

² Constellation Exhibit No. 1 Case No. 09-906-EL-SSO.

³ Id. at 20.

Code. The Stipulation in Section A-7 makes Rider GCR bypassable subject to a recall provision should the decline in use of the standard service pose a threat to collection of the GCR costs. Finally, Mr. Fein suggested that important retail customer data which is not routinely made available by FirstEnergy to Competitive Retail Electric Service providers (CRES) today be supplied in a usable electronic format. The Stipulation at G provides for the requested information which Mr. Fein believes will lower the cost and improve the ability of CRES to serve customers.

Constellation believes that the combination of incorporating the basic structure of the auction from Case No. 08-935-EL-SSO plus the refinements in the 09-906-EL-SSO application as amended by the Stipulation constitutes a procurement plan that serves the public well, carries out the State's energy policy as expressed in Section 4928.02, Revised Code and does not violate any Commission rule or regulatory policy. Thus, Constellation supports approval of the Stipulation as filed.

Full Requirements

The Ohio Consumers' Counsel (OCC) witness Wilson Gonzales testified that none of the competitive bid procedure design modifications suggested by the OCC in Case No. 09-906-EL-SSO were adopted by the Commission⁴ and thus "I therefore recommend that the intermediate-term and long-term CBP design embedded in Section A⁵ of the Stipulation be modified to incorporate the OCC's recommendations".⁶ In Case No. 09-906-EL-SSO, the OCC sponsored the testimony of Mr. William Steinhurst, an outside consultant. Mr. Steinhurst, on pages 10 -15 of his direct testimony, proposed that the Commission require FirstEnergy to split some portion

⁴ OCC Exhibit No. 2 Direct Prepared Testimony of Wilson Gonzales Case No. 10-388-EL-SSO.

⁵ The Stipulation is divided into sections by topic. Section A of the Stipulation addresses generation issues in general and the proposed auction in particular.

⁶ OCC Exhibit No. 2 Direct Prepared Testimony of Wilson Gonzales Case No. 10-388-EL-SSO at p. 45.

of the energy requirements of the standard service customers and supply that portion using a portfolio management and/or long-term power contracting approach.⁷ Neither Mr. Steinhurst in his testimony in the 09-906-EL-SSO case, nor Mr. Wilson in his testimony in the 10-388-EL-SSO case, provided details of how such a managed portfolio program with long term contracts would be administered. Mr. Steinhurst gives "general observations" of how such plans may work including obtaining consultants who in turn will design procurement plans and then administer a request for proposals to suppliers to implement the plans.⁸

Since no detailed managed portfolio program has been presented, a critical review of the merits and detriments of such a portfolio management program cannot be provided. In general terms, though, hiring consultants to design a portfolio plan and then holding bids on specific purchases seems a very time consuming and bureaucratic method to duplicate what the market already provides.

In sharp contrast, the proposed full requirements auction proposed in these proceedings is fully presented for Commission approval. As noted above, the Commission has direct experience with the full requirements approach as that method was used to procure the standard service energy for the first Electric Security Plan. Further, Mr. Fein in his testimony lists other states that use the full requirements auction approach, providing additional evidence that the full requirement auction is a tried and true method of standard service energy procurement.⁹

There are several advantages to using the full requirements auction versus a managed portfolio or, as Mr. Steinhurst suggests, some combination of auction and managed portfolio. First, in a full requirements auction the bid winning suppliers have the responsibility for portfolio management. Unlike a consultant designing a procurement strategy who bears no pecuniary

⁷ OCC Exhibit No. 3 Direct Prepared Testimony of William Steinhurst Case No. 09-906-EL-SSO.

⁸ OCC Exhibit No. 3 Direct Prepared Testimony of William Steinhurst p. 12 Case No. 09-906-EL-SSO.

⁹ Constellation Exhibit No. 1 Direct Prepared Testimony of David I. Fein p. 11.

responsibility for the results of its plan, a bid winning supplier is responsible for supplying the generation at the bid price. To do this, bid winning suppliers generally have full staffs of trained experts who watch the market and manage generation assets.

Second, the bid winning suppliers have the advantage of working on a scale that is larger than a single utility service area or in this case, arguably three local utility service areas. As professionals in the business of energy supply, wholesale suppliers are able to draw from their substantial experience throughout PJM, MISO, and in other jurisdictions to develop proprietary models of customer behavior and switching patterns, to refine these models, and to better analyze the local data provided by FirstEnergy. These wholesale suppliers will pass on the efficiencies they achieve due to their sophisticated risk management skills and experience in the form of more competitive bids for full requirements products.

In sum, the managed portfolio approach proposed by OCC means the Commission will be conducting hearings and using staff resources to evaluate the specifics of a procurement plan to assess whether the portfolio manager is buying the “right” products, in the “right” amounts, and at the “right” times. The Commission will no doubt be blamed if the approved products selected turn out to be above market and receive faint praise if the plan achieves market prices. A more logical approach to assuring market prices is to have a competitive auction and then assure that there are no barriers to the retail market. This ensures that the retail customer will always have access to market priced generation.

Even the OCC acknowledged that a full requirements auction can be a successful method of procuring standard service energy, having specifically found that the auction on which the current ESP proposal is based to be a success.

Q. All right. Now did OCC regard the competitive bidding process results associated with the current ESP for the FirstEnergy electric distribution utilities to have been successful?

A. I believe OCC and the general press was that it tested the market and the market bore positive results, yes.

Q. In fact, the Office of the Consumers' Counsel issued a press release after the competitive bidding process results were announced claiming that the auction process was successful; isn't that correct?

A. Yes, it was especially when compared to the prior company ESP offering.¹⁰

Long-term Contracts for S-RECs

There is one other issue that arose in the proceeding on which Constellation offers comments. The Ohio Environmental Council witness Carrie Cullen Hitt testified that the Commission should require FirstEnergy to enter into long term supply contracts for Solar Renewable Energy Credits (S-RECs).¹¹ Ms. Cullen Hitt was asked by Attorney Examiner Bojko whether CRES also had an S-RECs requirement. She indicated that the CRES did, but that unlike the utilities they did not have the ability to subsequently pass on costs to their customers. Rather, CRES have to build the cost of their S-RECs into their sales price.¹² Ms. Cullen Hitt is correct in both observations.

While Constellation takes no position on how FirstEnergy procures its S-RECs, it is important that so long as CRES have the responsibility to meet the same requirement for renewable energy credits and renewable solar credits that customers of CRES not be asked to pay for other customers' renewable energy. Thus, all REC and S-REC payments should be and remain bypassable.

¹⁰ ESP TR. 936 April 24, 2010.

¹¹ Ohio Environmental Council Exhibit No. 1 Direct Prepared Testimony of Carrie Hitt.

¹² ESP TR. 555- 558 April 21, 2010.

Respectfully Submitted,



M. Howard Petricoff (0008287)
Stephen M. Howard (0022421)
Michael J. Settineri (0073369)
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

Cynthia Fonner Brady
Senior Counsel
Constellation Energy Resources, LLC
550 W. Washington St., Suite 300
Chicago, IL 60661
Tel. (312) 704-8518
Fax (312) 795-9286

Attorneys for Constellation NewEnergy, Inc. and
Constellation Energy Commodities Group, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 30th day of April, 2010 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



M. Howard Petricoff

Mark A. Hayden
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

Robert J. Triozzi
Stephen L. Beeler
City of Cleveland Department of Law
601 Lakeside Avenue, Room 106
Cleveland, OH 44114

Michael Kurtz
David Boehm/Kurt Boehm
Boehm Kurtz & Lowery
36 E. Seventh Street, Suite 1510
Cincinnati, OH 45202

Garrett Stone/Michael Lavanga
Brickfield, Burchette, Ritts & Stone P.C.
1025 Thomas Jefferson Street N.W.
8th Floor, West Tower
Washington DC 20007

Cynthia Fonner Brady
Constellation Energy Resources LLC
550 W. Washington Blvd., Suite 300
Chicago, IL 60661

David C. Rinebolt/Colleen L. Mooney
Ohio Partners for Affordable Energy
231 W. Lima Street
P.O. Box 1793
Columbus, OH 43215

Jeffrey Small
Gregory Poulos/Richard Reese
Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, OH 43215-3485

John Bentine
Mark Yurick/Matthew White
Chester Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, OH 43215

David Fein
Constellation NewEnergy, Inc.
550 W. Washington Blvd., Suite 300
Chicago, IL 60661

Michael Lavanga
Brickfield, Burchette, Ritts & Stone P.C.
1025 Thomas Jefferson Street N.W.
8th Floor, West Tower
Washington DC 20007-5201

Samuel Randazzo/Lisa McAlister
Daniel Neilsen/Joseph M. Clark
McNees Wallace & Nurick LLC
21 E. State Street, 17th Floor
Columbus, OH 43215

Glenn Krassen
Bricker & Eckler LLP
1375 E. Ninth Street, Suite 1500
Cleveland, OH 44114-1718

Thomas O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

Arthur Korkosz, Esq.
FirstEnergy Corporation
76 South Main Street
Legal Department, 18th Floor
Akron, OH 44308

James Burk, Esq.
FirstEnergy Service Corporation
76 South Main Street
Akron, OH 44308

Ebony Miller, Esq.
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Richard Cordray/Duane W. Luckey/
Thomas McNamee/William Wright
Assistant Attorneys General
Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Matthew W. Warnock
Bricker & Eckler LLP
100 S. Third Street
Columbus, OH 43215

Richard L. Sites
Ohio Hospital Association
155 E. Broad Street, 15th Floor
Columbus, OH 43215-3620

Leslie A. Kovacik
Northwest Ohio Aggregation Coalition
420 Madison Ave., Suite 100
Toledo, OH 43604-1219

Robert Fortney
Tammy Turkenton
Public Utilities Commission of Ohio
180 E. Broad Street, 3rd Floor
Columbus, OH 43215

Barth E. Royer
Nolan Moser/Trent Dougherty
Bell & Royer LPA
33 South Grant Avenue
Columbus, OH 43215

Teresa Ringenbach
Direct Energy Services, LLC
5400 Frantz Rd., Suite 250
Dublin, OH 43016

Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113

Kevin Schmidt
The Ohio Manufacturers' Association
33 North High Street
Columbus, OH 43215-3005

Craig I. Smith
Material Sciences Corporation
2824 Coventry Road
Cleveland, OH 44120

Dane Stinson
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215

Theodore S. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

Douglas M. Mancino
McDermott Will & Emory LLP
2049 Century Park East, Suite 3800
Los Angeles, CA 90067-3218

Gregory K. Lawrence
McDermott Will & Emory LLP
28 State Street
Boston, MA 02109

Steven Huhman
Morgan Stanley
2000 Westchester Ave.
Purchase, NY 10577

Henry Eckhart
50 West Broad Street, #2117
Columbus, OH 43215

Gregory J. Dunn
Christopher Miller / Andre T. Porter
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215

Amy Spiller
Duke Energy Business Services, Inc.
221 E. Fourth Street, 25th Floor
Cincinnati, OH 45202

Michael D. Dortch
Kravitz, Brown & Dortch, LLC
63 E. State St., Suite 200
Columbus, OH 43215

Michael Beiting
Morgan Parke
FirstEnergy Service Company
76 S. Main Street
Akron, OH 44308

Daniel R. Conway
Porter Wright Morris & Arthur
41 S. High Street
Columbus, OH 43215

James F. Lang
Calfee Halter & Griswold LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114

David A. Kutik
Jones Day
901 Lakeside Avenue
Cleveland, OH 44114