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BEFORE
THE PUBLIC UTILITIES COMMISSION 08/04/10 2:24 PM

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In the Matter of the Application of Duke)	
Energy Ohio for Approval of a Market Rate)	
Offer to Conduct a Competitive Bidding)	Case No. 10-2586-EL-SSO
Process for Standard Service Offer Electric)	
Generation Supply, Accounting)	
Modifications, and Tariffs for Generation)	
Service)	

**MOTION FOR LEAVE TO INTERVENE OF
 CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.**

Now come Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (jointly "Constellation"), who, pursuant to Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, move for intervention in the above styled proceeding as full parties of record. The reasons supporting the intervention are contained in the accompanying Memorandum in Support.

By separate motion, requests for admission *Pro Hac Vice* for Cynthia Brady, Senior Counsel for Constellation has been filed in the above styled proceeding. Constellation asks that if approved she be added to the official service list along with David Fein who is a representative corporate officer. Contact information for the additional counsel and corporate representative are provided in the attached Memorandum in Support.

WHEREFORE, Constellation respectfully requests that the Commission grant this joint motion for leave to intervene and that Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. each be made a full party of record.

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Respectfully Submitted,



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**MEMORANDUM IN SUPPORT OF
THE MOTION TO INTERVENE OF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.**

Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, establish the standard for intervention in the above-styled proceeding as a full party of record.

Rule 4901-1-11 of the Ohio Administrative Code states in part:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

* * *

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

In addition to establishment of a direct interest, the factors that the Public Utilities Commission of Ohio (the "Commission") considers in implementing the above rule are the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding. (See also R.C. 4903.221(B) upon which the above rule is authorized). A review of these factors in light of following facts supports granting Constellation's intervention.

Constellation NewEnergy, Inc. ("CNE") provides electricity and energy-related services to retail customers in Ohio as well as in 15 other states, the District of Columbia and two Canadian provinces and serves over 15,000 megawatts of load and over 10,000 customers. CNE holds a certificate as a competitive retail electric supplier ("CRES") from the Commission to engage in the competitive sale of electric service to retail customers in Ohio. CNE currently provides service to retail electric customers in Ohio.

Constellation Energy Commodities Group, Inc. ("CCG") provides wholesale power and risk management services to wholesale customers (distribution utilities, co-ops, municipalities, power marketers, utilities and other large load serving entities), throughout the United States and Canada, in both regulated and restructured energy markets. CCG is active in the PJM Interconnection, L.L.C. and Midwest Independent System Operator ("MISO") wholesale power markets and has sold power for wholesale delivery in Ohio. CNE and CCG are subsidiaries of Constellation Energy Group, Inc.

In its first application filed in Case No. 08-920-EL-SSO pursuant to S.B. 221, Duke Energy Ohio, Inc. ("Duke") sought – and received – approval from the Public Utilities Commission of Ohio ("the Commission") to implement an electric security plan ("ESP"). The term of that ESP expires on December 31, 2011, and Duke now seeks approval of its next standard service offer (SSO), which will take the form of a market rate offer (MRO). Specifically, pursuant to Sections 4928.141 and 4928.142, Revised Code and Chapter 4901:1-35 of the Ohio Administrative Code, Duke is requesting that the Commission approve its proposed MRO. Duke asks that its application should be approved on or before February 14, 2011.

Constellation has existing and potential business interests in the State that will be affected by the outcome of the proceeding. The Commission's decision in the matter will affect the viability of the competitive retail and wholesale electric markets in Ohio in which CCG and CNE provides electric power and other products and services to retail and wholesale customers. CNE and CCG have been active parties before the Commission in numerous previous proceeding regarding the adoption of a MRO and ESPs. CNE and CCG's extensive experience in matters regarding the development of a competitive bidding process and competitive retail markets will assist the Commission in the development of a more complete record in this matter.

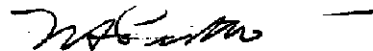
This motion for intervention precedes all discovery or other procedural termination dates. The motion is also being filed more than five days before the hearing deadline established in Rule 4901-1-29. Thus, the intervention is timely and should not unduly delay the instant proceedings. Finally, because of its unique expertise and participation in the competitive retail and wholesale markets in Ohio and across the country, Constellation will be able to assist in the development of a full and complete record to assist the Commission in its consideration of the Application.

WHEREFORE, Constellation respectfully requests that the Commission grant this joint motion for leave to intervene and that CNE and CCG each be made a full party of record. For purposes of receiving service in the proceeding, in addition to the undersigned, Constellation requests that the following persons be placed on the official service list:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 24th day of November, 2010 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



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