

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of )  
the Capacity Charges of Ohio Power ) Case No. 10-2929-EL-UNC  
Company and Columbus Southern Power )  
Company )

**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.

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.

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 Energy Commodities Group, Inc. ("CCG") is a power marketer authorized by the Commission to sell energy and capacity and certain ancillary services at market-based rates.<sup>1</sup> CCG focuses on serving the full requirements power needs of distribution utilities, co-ops and municipalities that competitively source their load requirements. CCG does not own any physical assets for the generation, transmission or distribution of electric power and has no retail

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<sup>1</sup> Constellation Power Source, Inc., 79 FERC ¶ 61, 167 (1997) (order initially granting CCG market-based rate authority).

electric customers or service territories. CCG is an active participant in various RTO/ISO markets and stakeholder groups.

Constellation New Energy, Inc. (“CNE”) is a retail electricity supplier that provides customized energy solutions and comprehensive energy services – including, in some cases, demand response products – to residential, commercial and industrial customers. On October 8, 2010, CNE acquired CPower, Inc., a leading energy management and demand response provider, managing assets in New York, New England, the Mid-Atlantic States, California, Texas and Ontario, Canada. With the acquisition of CPower, CNE’s portfolio currently includes approximately 1,500, MWs of demand response assets, including assets in Ohio. CNE has been certified to act as a competitive retail electric supplier to serve customers located within various service territories throughout the United States and Canada, including Ohio, and has been granted market-based rate authority by the Federal Energy Regulatory Commission (“FERC”).<sup>2</sup>

CCG and CNE (collectively “Constellation”) put all active participants in the electricity markets administered by PJM, a certified competitive retail electric supplier (“CRES Provider”) within the State of Ohio, with load serving obligations and demand response agreements that rely on PJM’s capacity market and would be impacted by AEP’s proposed formula rate templates. Accordingly, Constellation has a unique interest that will be directly affected by the outcome of these proceedings and that cannot be adequately represented by another party. Constellation appreciates the Public Utilities Commission of Ohio’s (“PUCO” or “the Commission”) interest in AEP’s capacity charges as applies to CRES Providers, and the opportunity to provide comments in this proceeding.

The intervention is timely and should not unduly delay the instant proceeding. Because of its unique expertise and participation in the competitive retail and wholesale markets in Ohio

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<sup>2</sup> NEV, L.L.C., 81 FERC ¶ 61,186 (1997) (order initially granting CNE market-based rate authority).


and across the country, Constellation will be able to assist in the development of a full and complete record to assist the Commission.

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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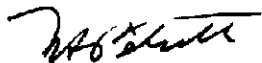


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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 7<sup>th</sup> day of January, 2011 by electronic mail, upon the persons listed below.



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