

FILE

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV  
2011 OCT 28 PM 4:45  
PUCO

In the Matter of the Application of )  
Duke Energy Ohio for Authority to )  
Establish a Standard Service Offer )  
Pursuant to Section 4928.143, Revised ) Case No. 11-3549-EL-SSO  
Code, in the Form of an Electric )  
Security Plan, Accounting )  
Modifications and Tariffs for )  
Generation Service. )

In the Matter of the Application of )  
Duke Energy Ohio for Authority to ) Case No. 11-3550-EL-ATA  
Amend its Certified Supplier Tariff, )  
P.U.C.O. No. 20. )

In the Matter of the Application of )  
Duke Energy Ohio for Authority to ) Case No. 11-3551-EL-UNC  
Amend its Corporate Separation Plan. )

**Direct Testimony  
In Support of  
October 24, 2011 Stipulation  
Of  
David I. Fein  
  
On Behalf of  
The Retail Energy Supply Association**

**Dated: October 28, 2011**

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 Sm Date Processed OCT 31 2011

## TABLE OF CONTENTS

I.	Introduction .....	1
II.	Support of the Stipulation and Recommendation.....	3
III.	Conclusion and Summary of Recommendations.....	9

1     **I.     INTRODUCTION**

2             **A.     Identification of Witness**

3     **Q.     Please state your name and your business address.**

4     **A.**     My name is David I. Fein, and my business address is 550 West  
5             Washington Boulevard, Suite 300, Chicago, Illinois 60661.

6  
7     **Q.     By whom are you employed?**

8     **A.**     I am employed by Constellation Energy Group, Inc.

9  
10    **Q.     Please describe your position with Constellation.**

11   **A.**     I am Vice President of Energy Policy in the Midwest and Pennsylvania for  
12             Constellation as well as Director of Retail Energy Policy. On  
13             Constellation's behalf I am also presenting testimony concerning how the  
14             Stipulation in the matter at bar impacts Constellation. A more complete  
15             description of my duties with Constellation is contained in that direct  
16             prepared testimony.

17  
18    **Q.     Please describe your educational and business experience.**

19   **A.**     From an educational perspective, I earned a Bachelor of Arts in Political  
20             Science and Behavioral Science & Law from the University of Wisconsin-  
21             Madison in 1989 and a Juris Doctorate from DePaul University College of  
22             Law in 1993. I am a member of the American, Chicago, Energy, and  
23             Illinois State Bar Associations. I have more than 19 years of experience in  
24             all facets of the energy industry. Previously, I served as Senior Regulatory

1 Counsel for Constellation and was responsible for providing legal and  
2 regulatory support to all of the regulatory activities of Constellation  
3 NewEnergy, Inc. ("CNE") before state and federal regulatory agencies  
4 across the country and in Canada. In addition, I acted as Senior Counsel  
5 providing primary legal support and counsel for all of CNE's commercial  
6 activities in Illinois and Alberta, Canada as well as support for other  
7 markets. My previous experience prior to joining Constellation includes  
8 five-and-a-half years at DLA Piper, LLP, a 3,600-lawyer law firm,  
9 specializing in energy and telecommunications law and regulation and  
10 four-and-a-half years as an Assistant State's Attorney, in the Illinois Cook  
11 County State's Attorney's Office, focusing on public utility law and  
12 regulation.

13  
14 **Q. On whose behalf are you testifying?**

15 **A.** I am testifying on the Retail Energy Supply Association ("RESA").  
16 Currently, I serve as the President of RESA as well as the Chair of its Ohio  
17 Electric group.

18  
19 **Q. Please describe RESA.**

20 **A.** RESA is a national trade association made up of a diverse group of retail  
21 energy suppliers who share the common vision that competitive retail  
22 energy markets deliver a more efficient, customer-oriented outcome than  
23 the traditional monopoly utility structure. Several RESA members are  
24 certificated as competitive retail electric service ("CRES") providers and

1 active in the Ohio retail market. Specifically, some of RESA's members  
2 currently provide CRES service to residential, commercial, industrial, and  
3 governmental customers in Ohio including customers in the Duke Energy  
4 Ohio service area. RESA's members include ConEdison Solutions;  
5 Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Exelon  
6 Energy Company; GDF Suez Energy Resources NA, Inc.; Green Mountain  
7 Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just  
8 Energy; Liberty Power; MC Squared Energy Services, LLC; NextEra  
9 Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus;  
10 and Reliant Energy Northeast LLC.

11  
12 **Q. Please describe RESA's interest in this proceeding.**

13 **A.** RESA has an interest in participating in the instant proceeding as its  
14 members provide electric power and energy to retail customers in the Duke  
15 Energy service territory. Further, RESA members, because they  
16 participate in the competitive retail markets in Ohio and across the country  
17 can bring the experience and best practices in other states and utility  
18 service areas.

19  
20 **II. SUPPORT OF THE STIPULATION AND RECOMMENDATION**

21 **Q. What is the purpose of your testimony?**

22 **A.** To present the reasons that RESA supports the Stipulation and  
23 Recommendation ("Stipulation") and why we believe Commission  
24 approval of the Stipulation will be in the public interest. For the reasons

1       stated below, unlike the Application, RESA believes the Stipulation is a  
2       reasonable compromise and resolution of the issues. Based upon the  
3       advice of counsel, RESA believes that the Stipulation is not in violation of  
4       any statute or regulatory principle and is in the public interest. Thus,  
5       RESA supports the Commission's approval of the Stipulation as presented.  
6

7   **Q.   Please summarize why RESA supports the Stipulation.**

8   **A.**   The Stipulation provides settlement of a number of important issues that  
9       will lead to further development of the competitive market in the Duke  
10      Energy Ohio service territory. Those include:

- 11      • The use of a competitive wholesale procurement process to establish  
12         the SSO;
- 13      • The transfer of Duke Energy Ohio's legacy generation assets into a  
14         separate subsidiary;
- 15      • The development of a variety of retail market enhancements, including:
  - 16          ○ Development of a secure, web-based system that will provide  
17             electronic access to key customer usage and account data that  
18             can be accessed via a secure, supplier website that presents a  
19             variety of data and information. In the interim, Duke Energy  
20             Ohio agrees that certain information will be added to the  
21             existing web system;
  - 22          ○ The provision of certain types of data via EDI transactions;

- A quarterly updated sync list to CRES providers showing the accounts that are enrolled with the CRES provider and certain other data and information;
  - The required interval meter threshold size requirement will change from 100kW to 200kW;
  - A collaborative process to discuss the deployment of an electric vehicle (EV) ecosystem that works in tandem with a competitive retail market; and
  - Annual meetings or conference calls with registered CRES providers to discuss supplier coordination issues affecting CRES providers, including but not limited to CRES consolidated billing.
- A guarantee that all energy efficiency programs and rebates are available at the same terms and conditions to customers, regardless of whether they purchase generation service from a CRES provider or Duke Energy Ohio.
  - SmartGrid meters and data are available to all customers on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.
  - The switching fee will be reduced from \$7.00 to \$5.00.
  - Bill-ready billing will be made functional and available as soon as commercially and reasonably practicable, but in no event later than September 30, 2013.

- 1           • The per-bill charges for consolidated, bill-ready billing will be reduced  
2           to 50 percent of the existing rate.

3  
4   **Q.   Please explain why it is important that this ESP address retail**  
5   **competition in Duke Energy Ohio's service territory and not**  
6   **only a wholesale procurement.**

7   **A.** Of all the Ohio utilities today Duke Energy has the most thriving  
8       competitive retail market. There are multiple suppliers behind Duke  
9       serving customers of all classes from residential to industrial. An ESP  
10      which focused solely on wholesale procurement while good for expanding  
11      market reflective POLR service is pointless if customers no longer have the  
12      ability to shop. This settlement balances both sides of a competitive  
13      market by eliminating certain barriers to information that limit the types  
14      of retail supplier offers and raise costs to reach customers.

15  
16   **Q.   Please discuss why you believe that Duke Energy's ESP will**  
17   **promote the continued and further development of retail**  
18   **competition within its service territory.**

19   **A.** The Stipulation takes a number of important steps to facilitate the ability  
20      of CRES providers to provide competitive service to retail customers.  
21      Specifically, paragraphs IV. O, P, and T of the Stipulation address many of  
22      these important matters and they are listed above. As discussed above,  
23      under the Stipulation, Duke Energy Ohio has agreed to modify their  
24      existing retail tariffs and business practices so that CRES providers are



1 provided with a plethora of enhanced data and information to better  
2 enable the development of retail competition.

3

4 **Q. Why is it important that such information be provided to CRES**  
5 **Providers?**

6 **A.** By providing this type of data and information, CRES providers will be  
7 better able to provide services to prospective customers, better able to  
8 meet the needs of existing customers, and better able to manage their  
9 businesses. More accurate and timely data allows suppliers to offer more  
10 customized price offerings to customers upfront rather than relying on  
11 customers to provide copies of their bills to receive more customized CRES  
12 offers. Further, provision of this type of data and information allows a  
13 CRES Provider to provide a prospective customer with a competitive offer  
14 for electric service, check the enrollment status of a new customer, and  
15 perform other functions designed to better serve customers.

16

17 **Q. Are there any more granular or specific issues associated with**  
18 **access to interval data for customers with interval meters?**

19 **A.** Yes. If CRES providers do not receive timely and accurate delivery of  
20 interval data, this not only impacts suppliers' ability to provide price  
21 quotations to customers but also frustrates their ability to issue an invoice  
22 to a customer on a timely basis, which inconveniences customers and  
23 increases suppliers' costs.

24

1   **Q.   Does the Stipulation address the billing options that are**  
2       **available for CRES providers?**

3   **A.**   Yes, in a couple respects. First, Duke Energy Ohio has agreed to make the  
4       Bill Ready utility consolidated bill option functional. Second, Duke Energy  
5       Ohio has agreed to discuss Supplier Consolidated Billing options with  
6       interested CRES providers. Third, Duke Energy Ohio has agreed to  
7       implement a Purchase of Accounts Receivables (PAR) program with a zero  
8       discount and the flexibility that allows CRES providers to determine which  
9       customers and/or classes of customers that utilize the PAR program.

10

11   **Q.   Are there any other aspects of the Stipulation that RESA would**  
12       **like to comment on?**

13   **A.**   Yes. The Stipulation sets up a collaborative to work on electric vehicle  
14       issues. The electric vehicles collaborative will allow various market  
15       participants the opportunity to discuss policy and other issues related to  
16       successful deployment of electric vehicles and their supporting  
17       infrastructure.

18

19   **Q.   Do you have any final comments on how the Stipulation will**  
20       **better promote retail competition in the Duke Energy service**  
21       **territory?**

22   **A.**   Yes. By approving the Stipulation, the Commission will establish a  
23       framework that will better support the continued development of retail

1 competition, large-scale government aggregation, and competitive  
2 wholesale electric markets.

3  
4 **III. CONCLUSION AND SUMMARY OF RECOMMENDATIONS**

5 **Q. Please summarize your conclusions and recommendations**  
6 **regarding the Stipulation in Duke Energy Ohio's ESP.**

7 **A.** RESA believes that the Stipulation was negotiated among knowledgeable  
8 and informed parties. Support for the Stipulation is widespread and  
9 virtually unanimous and covers a broad and diverse group of stakeholder  
10 interests. Based upon the advice of counsel, RESA believes that the  
11 Stipulation violates no law, rule or regulatory principle. Finally, the  
12 Stipulation will move Duke Energy Ohio into a competitive wholesale  
13 market which should be of great benefit to all retail customers. This  
14 should also lead to a more workable market structure that will lead to the  
15 further development of retail and wholesale competition to the benefit of  
16 Duke Energy Ohio consumers.

17  
18 The Commission has an opportunity to be a steadying force in the  
19 continued evolution of the competitive electric market in Ohio. The  
20 resolution of the issues pertaining to Duke Energy's ESP as presented in  
21 the Stipulation is the best means for the procurement of SSO. Pursuant to  
22 the Stipulation, Duke Energy's ESP will bring the benefits of wholesale  
23 competition to customers who do not choose a competitive alternative to

1 Duke Energy's SSO and should help foster the continued evolution of the  
2 competitive retail electric market.

3

4 **Q. Does this conclude your testimony?**

5 **A.** Yes.

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 28<sup>th</sup> day of October, 2011 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



---

M. Howard Petricoff

David F. Boehm  
Michael L. Kurtz / Jody M. Kyler  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, OH 45202  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[jkyler@BKLawfirm.com](mailto:jkyler@BKLawfirm.com)

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

Samuel C. Randazzo  
Joseph Olikier  
McNees Wallace & Nurick  
21 East State Street, 17th Floor  
Columbus, Ohio 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)

Jeffrey L. Small  
Joseph P. Serio / Melissa R. Yost  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)  
[yost@occ.state.oh.us](mailto:yost@occ.state.oh.us)

William Wright  
Chief, Attorney General's Section  
Public Utilities Commission of Ohio  
180 E. Broad St., 6th Floor  
Columbus, OH 43215  
[w.wright@puc.state.oh.us](mailto:w.wright@puc.state.oh.us)

Jesse A. Rodriguez, Esq.  
Public Policy & Affairs Manager  
PHV #1115-2011  
Exelon Generation Company, LLC  
300 Exelon Way  
Kennett Square, PA 19348  
[Jesse.rodriguez@exeloncorp.com](mailto:Jesse.rodriguez@exeloncorp.com)

Amy B. Spiller  
Elizabeth H. Watts / Rocco O. D'Ascenzo  
Duke Energy Ohio  
139 E. Fourth Street, 1303-Main  
P.O. Box 961  
Cincinnati, OH 45201-0960  
[Amy.spiller@duke-energy.com](mailto:Amy.spiller@duke-energy.com)  
[Elizabeth.watts@duke-energy.com](mailto:Elizabeth.watts@duke-energy.com)  
[Rocco.d'ascenzo@duke-energy.com](mailto:Rocco.d'ascenzo@duke-energy.com)

David I. Fein  
Vice President, Energy Policy - Midwest  
Constellation Energy Group, Inc.  
550 West Washington, Blvd., Suite 300  
Chicago, IL 60661  
[david.fein@constellation.com](mailto:david.fein@constellation.com)

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 W. Lima Street  
Findlay, OH 45840  
[Cmooney2@columbus.rr.com](mailto:Cmooney2@columbus.rr.com)

Douglas E. Hart  
441 Vine Street, Suite 4192  
Cincinnati, OH 45202  
[dhart@douglasshart.com](mailto:dhart@douglasshart.com)

David A. Kutik  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)

James F. Lang  
Laura C. McBride / N. Trevor Alexander  
Calfee, Halter & Griswold LLP  
1400 KeyBank Center  
800 Superior Avenue  
Cleveland, OH 44114  
[jl原因@calfee.com](mailto:jl原因@calfee.com)  
[lmcbride@calfee.com](mailto:lmcbride@calfee.com)  
[tallexander@calfee.com](mailto:tallexander@calfee.com)

Sandy I-ru Grace, Esq.  
Assistant General Counsel  
Exelon Business Services Company  
PHV #1122-2011  
101 Constitution Avenue N.W.  
Suite 400 East  
Washington, DC 20001  
(202) 347-7500  
[Sandy.grace@exeloncorp.com](mailto:Sandy.grace@exeloncorp.com)

Cynthia Fonner Brady  
Senior Counsel  
Constellation Energy Resources, LLC  
550 West Washington, Blvd., Suite 300  
Chicago, IL 60661  
[cynthia.brady@constellation.com](mailto:cynthia.brady@constellation.com)

Trent A. Dougherty / Nolan Moser  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43215-3449  
[trent@theOEC.org](mailto:trent@theOEC.org) /  
[Nolan@theOEC.org](mailto:Nolan@theOEC.org)

Mark A. Hayden  
FirstEnergy Service Company  
76 S. Main Street  
Akron, OH 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

Allison E. Haedt  
Jones Day  
P.O. Box 165017  
Columbus, OH 43216-5017  
[aehaedt@jonesday.com](mailto:aehaedt@jonesday.com)

Lisa G. McAllister  
Matthew W. Warnock  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus, OH 43215-4291  
[lmcalister@bricker.com](mailto:lmcalister@bricker.com)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)

Andrew J. Sonderman  
Margeaux Kimbrough  
Kegler Brown Hill & Ritter LPA  
Capitol Square, Suite 1800  
65 E. State St.  
Columbus, OH 43215  
[asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com)  
[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)

Jouett K. Brenzel  
Cincinnati Bell, Inc.  
221 E. Fourth Street, 103-1280  
Cincinnati, OH 45202  
[Jouett.brenzel@cinbell.com](mailto:Jouett.brenzel@cinbell.com)

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

Mary W. Christensen  
Christensen & Christensen LLP  
8760 Orion Place, Suite 300  
Columbus, OH 43240-2109  
[mchristensen@columbuslaw.org](mailto:mchristensen@columbuslaw.org)

Dane Stinson  
Bailey Cavalieri LLC  
10 West Broad Street, Suite 2100  
Columbus, OH 43215  
[Dane.Stinson@BaileyCavalieri.com](mailto:Dane.Stinson@BaileyCavalieri.com)

Gregory J. Poulos  
Enernoc, Inc.  
101 Federal St., Suite 1100  
Boston, MA 02110  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)

Henry Eckhart  
The Sierra Club  
1200 Chambers Road, Ste. 106  
Columbus, OH 43212-1703  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

John W. Bentine  
Mark S. Yurick  
Zachary D. Kravitz  
Chester Willcox & Saxbe LLP  
65 E. State St., Suite 1000  
Columbus, OH 43215  
[jbentine@cwsllaw.com](mailto:jbentine@cwsllaw.com)  
[myurick@cwsllaw.com](mailto:myurick@cwsllaw.com)  
[zkravitz@cwsllaw.com](mailto:zkravitz@cwsllaw.com)

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

Christopher J. Allwein  
Williams, Allwein & Moser, LLC  
1373 Grandview Ave., Suite 212  
Columbus, OH 43212  
[callwein@williamsandmoser.com](mailto:callwein@williamsandmoser.com)

William L. Massey  
Covington & Burling, LLP  
1201 Pennsylvania Ave., N.W.  
Washington DC 20004  
[wmassey@cov.com](mailto:wmassey@cov.com)

Tara Santerelli  
Environmental Law & Policy Center  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212  
[tsanterelli@elpc.org](mailto:tsanterelli@elpc.org)

Kevin Osterkamp  
Roetzel & Andress  
155 E. Broad St., 12<sup>th</sup> Floor  
Columbus, OH 43215  
[kosterkamp@ralaw.com](mailto:kosterkamp@ralaw.com)

Joseph M. Clark  
Vectren Retail, LLC  
6641 N. High St., Suite 200  
Worthington, OH 43085  
[jmclark@Vectren.com](mailto:jmclark@Vectren.com)

Rick D. Chamberlain  
Behrens Wheeler & Chamberlain  
6 N.E. 63<sup>rd</sup> St., Suite 400  
Oklahoma City, Oklahoma 73105  
[Rdc\\_law@swbell.net](mailto:Rdc_law@swbell.net)

Matthew S. White  
Interstate Gas Supply  
6100 Emerald Parkway  
Dublin, OH 43016  
[mwhite@igsenergy.com](mailto:mwhite@igsenergy.com)