**BEFORE THE**

**UNITED STATES OF AMERICA**

**FEDERAL ENERGY REGULATORY COMMISSION**

Constellation Energy Commodities Group, Inc. Docket No. IN12-7-000

**MOTION FOR ADOPTION OF PROPOSED DISTRIBUTION METHOD**

**FOR THE PORTION OF THE PJM FUND**

**TO BE ALLOCATED TO**

**THE PUBLIC UTILITIES COMMISSION OF OHIO  
FOR**

**THE DISTRIBUTION OF DISGORGED FUNDS**

**To: Deputy Chief Judge Bobbie J. McCartney**

**Presiding Administrative Law Judge**

On March 9, 2012, the Federal Energy Regulatory Commission issued an *Order Approving Stipulation and Consent Agreement*, whereby Constellation Energy Commodities Group (CCG) agreed to disgorge $110,000,000 in unjust profits, of which $6,000,000 would be allocated to a PJM Fund for the benefit of electric energy consum­ers.[[1]](#footnote-1) State agencies from the affected states were allowed to make requests for apportion­ment of the funds.

On June 7, 2012, Deputy Chief Judge Bobby J. McCartney issued an *Order Granting Unopposed Motions for Determination of Eligibility* approving the Ohio Commission as the eligible agency within the State of Ohio to make requests for appor­tionment.[[2]](#footnote-2)

By Order issued July 11, 2012, Deputy Chief Judge McCartney directed the eligi­ble state agency parties in the PJM footprint to file a joint stipulation regarding a pro­posed allocation and distribution method of the $6 million PJM Fund or inform her if a joint stipulation could not be reached.[[3]](#footnote-3)

On July 30, 2012, a number of eligible state agencies, including the Public Utilities Commission of Ohio (Ohio Commission), filed a motion and a joint stipulation agreement regarding the allocation of the PJM Fund. The stipulation agreement proposed that each state within the PJM footprint be allocated a share of the PJM Fund based on the state’s proportional energy sales during the relevant period.[[4]](#footnote-4) The stipulation agree­ment did not propose a distribution method. It only addressed the allocation amount to each state, leaving the possibility that the stipulation agreement be supplemented in the future with a distribution request.

The Ohio Commission files a supplemental proposal (designated Attachment A) addressing the distribution portion of the PJM Fund to be allocated to the State of Ohio, and specifi­cally to the Ohio Commission, and moves the Commission to distribute pro­ceeds to the Ohio Commission accordingly.

WHEREFORE, the Ohio Commission requests that the attached proposed distribu­tion method be approved.

Respectfully submitted,

*/s/ Thomas W. McNamee*

**Thomas W. McNamee**

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**On behalf of**

**The Public Utilities Commission of Ohio**

# CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

*/s/ Thomas W. McNamee*

**Thomas W. McNamee**

Dated at Columbus, Ohio this September 10, 2012.

**BEFORE THE**

**UNITED STATES OF AMERICA**

**FEDERAL ENERGY REGULATORY COMMISSION**

Constellation Energy Commodities Group, Inc. Docket No. IN12-7-000

**APPLICATION**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO  
FOR**

**THE DISTRIBUTION OF DISGORGED FUNDS**

# INTRODUCTION AND BACKGROUND

On July 11, 2012, the Federal Energy Regulatory Commission (“FERC”) issued an order[[5]](#footnote-5), among other things, directing eligible state agencies to file joint stipulation within 60 days of its decision regarding a proposed allocation and distribution method of the $6 million PJM portion associated with Constellation Energy Commodities Group’s (“CCG’s”) Stipulation and Consent Agreement, which resolved an investigation under Part 1b of FERC’s regulations.[[6]](#footnote-6)

FERC’s two-prong test to satisfy eligibility to participate in requests for the appor­tionment of disgorged funds follows: (1) those eligible participants must be appropriate state agencies; and (2) those appropriate state agencies must be from the states within the independent system operator (“ISO”) region for which they wish to seek apportionment from that region’s portion of the disgorged funds. The Public Utilities Commission of Ohio (“Ohio Commission”) satisfies FERC’s two-prong test and is, therefore, the appro­priate eligible state agency in the State of Ohio to receive such funds resulting from the CCG Settlement and Consent Decree.

On July 30, 2012, the indicated PJM State Agencies[[7]](#footnote-7) filed at FERC a Joint Stipula­tion Agreement (“Joint Stipulation”) regarding PJM fund allocation. The Joint Stipulation, as filed, included signatories representing 13 of the 14 Organization of PJM States, Inc. (“OPSI”) member states. On August 1, 2012, the Illinois Commerce Com­mission (“ICC”) filed a letter at FERC in the above-captioned proceeding supporting the proposed $6 million dollar allocation and distribution methodology. Consequently, the ICC requested to join the Joint Stipulation. The Joint Stipulation, based on the PJM Market Monitor’s data, reflects that the State of Ohio’s portion of the disgorged funds is set equal to 11.67 percent of $6 million (or $700,200.00).

In that the OPSI states (or for the purpose of this application, the authorized state jurisdictions) have stipulated their respective allocation of the disgorged funds, the Ohio Commission hereby submits to FERC its application for the distribution of funds. The following application ensures that the Ohio Commission’s use of such funds inures to the benefit of the state of Ohio’s retail electric customers located in American Electric Power’s (“AEP’s”) and Dayton Power and Light’s (“DP&L’s”) service territories. [[8]](#footnote-8)

# APPLICATION FOR THE STATE DISTRIBUTION OF FUNDS

## Office of Public Affairs Outreach

With a number of legislative changes in the electric utility industry in Ohio over the past 13 years, the Ohio Commission recognizes the need to educate consumers on the retail competition of electric services. With this recognition, the Ohio Commission cre­ated the Office of Retail Competition (“ORC”) in July of 2012. The mission of the ORC is to improve awareness, trust and understanding of market-based utility service in Ohio.

Outreach is defined as “the act of reaching out” and “the extending of services or assistance beyond current or usual limits.” The ORC is charged with the task of institut­ing an outreach program to establish and foster understanding, promote public awareness, and influence behaviors, attitudes and actions with the goal of increasing the involvement of Ohio consumers in choosing their electric suppliers.

### Issues

Ohio consumers are not fully aware of the opportunity and process of electric retail competition. Therefore they are not fully participating in the market, and not fully appreciating the potential cost-savings benefit.

The ORC has a clear outreach strategy that currently remains unfunded. With proper funding, the consumer outreach and education effort could greatly increase Ohio consumer’s involvement and realization of the cost-savings benefit of electric retail competition.

The Ohio Commission proposes that a budget of $1,379,332[[9]](#footnote-9) is needed to launch the ORC and the necessary education program, allowing for a sustainable program to ensure all Ohio electric consumers are aware of and understand the potential cost-savings benefit of electric retail competition. The outreach strategy will focus efforts on inform­ing consumers of the process to shop for and select an electric generation supplier, ques­tions to ask available suppliers, tips on what to look for in proposed contracts, electric customer’s bill of rights, price-to-compare tools and how to use them, and where to turn if they need assistance. Additionally, the dedicated website’s intent will be to offer cus­tomers a high-end interactive tool to help them compare offers and determine which offer is best for them – specifically to demonstrate which offers the best cost-savings scenario. This $1,379,332 will be allocated as follows:

### Informational Material Specific to Education Program

Informational collateral such as brochures, factsheets, articles, posters, media kits, presentations, and other printed materials and the development of associated branding will be used to carry a highly visible educational message. The Ohio Commission requests that $479,332 (*i.e*., $250,000 [program identity branding] and $229,332 [materi­als fulfillment]) be allocated for development and fulfillment of these materials to ensure Ohio’s electric consumers have the information needed to best educate them on electric retail competition and their ability to shop for generation supply, and recognize the potential cost savings.

### Interactive Educational Website Dedicated to Program

Additionally, the Ohio Commission proposes that $450,000 be allocated to develop­ing and launching a high level, interactive website dedicated to retail competition in Ohio. This website will prove to be a widely utilized tool as it will offer real-time information of offers available and interactive features to demonstrate actual cost-savings comparisons. If properly funded, all of these outreach tools may be implemented in the outreach effort.

### On-Air Advertising Promoting Education Program

As the campaign advances beyond the initial launch, the ORC team will be able to evaluate the campaign and the grassroots efforts and would like to introduce on-air advertising to largely announce the educational program and ensure all electric consum­ers in Ohio are aware that the ORC exists. Additionally, it will inform them that our public information officers are available, along with a variety of informational material to help guide them and answer any questions regarding comparing offers to achieve the cost savings associated with electric retail competition. The on-air advertising would require an allocation of $450,000.

In sum, the Ohio Commission believes that the launch of ORC and the consumer education program will benefit Ohio’s electric consumers by proactively offering multi­ple forms of informational material and a highly visible team to educate and offer guid­ance in understanding electric retail competition in Ohio and the potential cost-savings benefit associated with it. The Ohio Commission respectively requests that FERC dis­tribute the funds as allocated in the proposed consumer education plan outlined herein.

## Federal Energy Advocate Personnel Addition

A portion of the disgorged funds[[10]](#footnote-10) would also be used by the Ohio Commission to initiate the funding of an additional full-time employee in the Office of the Federal Energy Advocate (“OFEA”). This section at the Ohio Commission is required by Ohio Revised Code § 4928.24 to monitor the activities of FERC and other federal agencies and to advocate on behalf of Ohio’s retail electric service consumers. In response to this man­date, the Ohio Commission established the OFEA, which is responsible, among other duties, for monitoring, investigating and performing analysis of strategic issues related to the federal energy jurisdiction; recommending action as a result of the analysis; identify­ing opportunities for intervention or comment in FERC and other federal agency pro­ceedings. This additional new staff person, advocating on behalf of Ohio’s electric retail customers’ best interests, would be responsible for researching, per­forming analysis and writing Ohio Commission recommendations to FERC and the Department of Energy (“DOE”) in response to rulemaking proposals and administrative investigations. This additional new Ohio Commission staff person would also be responsible for working, on behalf Ohio’s electric retail customers’ best interests, with PJM and responding to the RTO’s various filings at FERC, addressing wholesale market issues and/or trans­mission-related tariff amendments through the compilation of formal filings to FERC.[[11]](#footnote-11)  This addi­tional permanent full-time position over a two-year period would cost $176,669.

OFEA, in its nascent stages of development, is currently sparsely staffed, in that it consists of only two full-time employees. The Ohio Commission proposes to augment this office through the addition of another permanent, full-time staff person and proposes to use Constellation’s disgorgement funds to partially fund this position for two years. The Ohio Commission’s proposal in this regard will directly benefit Ohio’s retail electric customers by ensuring their best interests are fully advocated in the federal arena. More­over, as an electric retail competition state, the rates paid by Ohio’s electricity customers are inextricably intertwined with decisions regarding various costs and policy matters made at the federal and wholesale level. Therefore, additional personnel will assist to further identify cases, issues and policies at the federal level that directly impact overall retail rates for Ohio’s electric customers. This will allow the Ohio Commission to more effectively advocate at the federal level on behalf of the State of Ohio’s retail electric customers. The Ohio Commission submits that strength­ening OFEA with an additional staff member and partially funding that position for over a two year period will result in a tangible benefit for Ohio consumers in the AEP and DP&L service areas and is an appropriate use of the disgorged funds, consistent with FERC’s directives.

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| **Cost Description** | **Budgeted Cost** |
| Federal Advocate Staff Public Utilities Aide (Direct Payroll) two year funding | $ 113,090 |
| Federal Advocate Staff Public Utilities Aide (Fringe Cost @ 56.22%) two year funding | $ 63,579 |
| Website | $  450,000 |
| Program Identity Branding | $ 250,000 |
| Printing | $ 229,332 |
| On-Air Advertising | $  450,000 |
| Total Cost | $  1,556,001 |
| **45% Ohio Load Share Rate (AEP and DP&L Service Territories)** | **$   700,200** |

# CONCLUSION

The Ohio Commission submits that its proposal in this application will benefit Ohio electric customers located in DP&L and AEP and will support its efforts to establish a robust retail electricity market while simultaneously undertaking a more active role in the federal decision-making process to ensure that Ohio’s retail electric customers’ best interests are well represented. The Ohio Commission thanks FERC for the opportunity to make this application of funds and respectfully requests that FERC distribute such funds allocated to the Ohio Commission to be used in the best interest of Ohio’s retail electric customers as set forth in this proposal.

Respectfully submitted,

*/s/ Thomas W. McNamee*

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**On behalf of**

**The Public Utilities Commission of Ohio**

Dated at Columbus, Ohio this September 10, 2012

1. *Constellation Energy Commodities Group, Inc.*, 138 FERC ¶ 61,168 (2012) (Order Approving Stipulation and Consent Agreement at ¶22) (March 9, 2012). [↑](#footnote-ref-1)
2. *Constellation Energy Commodities Group, Inc.*, 138 FERC ¶ 61,168 (2012) (Order Approving Stipulation and Consent Agreement at ¶1, fn. 1) (March 9, 2012). [↑](#footnote-ref-2)
3. *See Order Denying Opposed Motions for Eligibility Determination and Directing Eligible Parties to File Joint Stipulations* at ¶71. [↑](#footnote-ref-3)
4. The “relevant period” comprises the months of September 2007 through December 2008; *see* *Indicated PJM State Agencies’ Joint Stipulation Agreement Regarding PJM Fund Allocation* at ¶1. [↑](#footnote-ref-4)
5. *Constellation Energy Commodities Group, Inc*., Docket No. IN12-7-000. [↑](#footnote-ref-5)
6. *Constellation Energy Commodities Group, Inc.*, 138 FERC ¶ 61,168 (2012) (Order Approving Stipulation and Consent Agreement) (approved on March 9, 2012). [↑](#footnote-ref-6)
7. Indicated PJM State Agencies include all of those agencies which are signatories to the attached stipulation, namely: District of Columbia Public Service Commission, Delaware Public Service Commission, Indiana Utility Regulatory Commission, Attorney General of Kentucky, Kentucky Public Service Commission, Maryland Public Service Commission, Maryland Office of Attorney General, Michigan Public Service Commission, New Jersey Board of Public Utilities, North Carolina Department of Justice, North Carolina Utilities Commission, Public Staff of the North Carolina Utilities Commission, Public Utilities Commission of Ohio, Pennsylvania Public Utility Commission, Virginia State Corporation Commission, and Public Service Commission of West Virginia. [↑](#footnote-ref-7)
8. The two Ohio local distribution companies impacted by CCG’s actions include the Dayton Power and Light Company and American Electric Power (*i.e.,* The Columbus and Southern Power Company and the Ohio Power Company), which represent approximately 45 percent of the State of Ohio’s total annual load. [↑](#footnote-ref-8)
9. $1,379,332 \* .45 (approximate combined load in Ohio for AEP and DP&L) = $620,699 ORC funding request. [↑](#footnote-ref-9)
10. $176,669 \* .45 (approximate combined load in Ohio for AEP and DP&L) = $79,501 FEA funding request. [↑](#footnote-ref-10)
11. The new additional full time staff person would be responsible for, among other things, projects regarding the following RTO issues: independent system operator (ISO) or regional transmission organization (RTO) market function; ancillary services; RTO pricing; RTO metrics; financial hedging; demand response; energy efficiency; electric reliability and infrastructure; market-based pricing for wholesale services; administration of and revisions to the Open Access Transmission Tariff (OATT); incentive pricing for transmission services; transmission cost allocation; transmission providers’ standards of conduct; mergers and acquisitions; market power and market manipulation; the market monitor function; affiliate transactions and separate affiliates; dynamic pricing and price responsive demand; deliverability of electricity across seams; generation interconnection; capacity injection; and gas and electric coordination. [↑](#footnote-ref-11)