

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio to Modify its Market-Based	)	Case No. 06-986-EL-UNC
Standard Service Offer.	)	

**MOTION FOR LEAVE TO INTERVENE AND  
PRELIMINARY COMMENTS 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 a full party of record. The reasons supporting the intervention are contained in the accompanying memorandum in support. In addition, Constellation offers preliminary comments on the application.

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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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,

/s/

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**MEMORANDUM IN SUPPORT**

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.

Among the factors that 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. Constellation NewEnergy 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.<sup>1</sup> CNE currently provides service to retail electric customers in the Duke Energy Ohio service area.

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 deregulated energy markets. CCG is active in the PJM and MISO wholesale power markets and has sold power for wholesale delivery in Ohio. CNE and CCG are subsidiaries of Constellation Energy Group, Inc.

In the instant matter, Duke Energy Ohio filed an application to extend its Rate Stabilization Plan authorized by the Public Utilities Commission in Case No. 03-93-EL-ATA with significant amendments. One of those amendments would combine the System Reliability Tracker (“SRT”), a fee to compensate Duke for holding excess capacity, with the Infrastructure Maintenance Charge (“IMF”). Under the current Rate Stabilization Plan (“RSP”), all standard service customers pay the SRT because it is designed to represent the costs associated with Duke reserving capacity for the standard service customers. Currently, shopping customers are not required to pay the SRT as the capacity obligation rests with their competitive retail electric service provider (“CRES”). Currently, the IMF is a non-bypassable charge for shopping and standard service customers. By proposing to combine the SRT with the IMF, Duke seeks to improperly require shopping customers to pay twice for costs associated with capacity.

The Application also maintains a requirement that 75% of residential customers and 50% of all commercial and industrial customers pay the Annually Adjusted Component

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<sup>1</sup> See Case No. 00-1717-EL-CRS

Rider (“AAC”) charge. This non-bypassable rider compensates Duke for environmental expenditures primarily associated with its generation facilities. Requiring shopping customers to pay for environmental compliance costs that are associated with Duke’s generating facilities is improper and inequitable when such customers do not purchase electricity from Duke.

Finally, the proposal will continue to delay adoption of a market price bidding option established by the General Assembly in Section 4928.14(B), Revised Code.

As a result, adoption of the instant Application will have a detrimental impact on the continued development of the competitive retail market and Constellation’s ability to provide service to current and prospective retail and wholesale customers.

This motion for intervention precedes all discovery or other procedural termination dates. The motion is also being filed in advance of the five days before hearing deadline established in OAC 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, for the reasons stated above, Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. request that their joint motion for leave to intervene be granted and they be made full parties of record.

Respectfully Submitted,

/s/

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 3rd day of August, 2007 by electronic mail, upon the persons listed below.

/s/

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/3/2007 4:15:46 PM**

**in**

**Case No(s). 06-0986-EL-UNC**

Summary: Motion Motion for Leave to Intervene and Preliminary Comments of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. electronically filed by Stephen M Howard on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.