

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the adoption of rules for )  
alternative and renewable energy technologies )  
and resources, and emission control reporting )  
requirements, and amendment of Chapters ) Case No. 08-888-EL-ORD  
4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 )  
of the Ohio Administrative Code, pursuant )  
to Chapter 4928, Revised Code, to implement )  
Senate Bill No. 221 )

**REPLY COMMENTS TO THE  
APPLICATIONS FOR REHEARING  
BY  
CONSTELLATION NEWENERGY, INC.,  
DIRECT ENERGY SERVICES, LLC, AND  
INTEGRYS ENERGY SERVICES, INC.**

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**I. Introduction**

Now come Constellation NewEnergy, Inc., Direct Energy Services, LLC, and Integrus Energy Services, Inc. (hereinafter collectively referred to as the "Competitive Suppliers") and in accordance with the Attorney Examiner's Entry of May 21, 2009 submit the following Reply Comment. On May 15, 2009 some fifteen petitions for rehearing were filed. One commentator suggested that Rule 4901:1-40 (A)(3) which states that all costs incurred by an electric distribution utility to comply with Section 4928.64, Revised Code be by-passable be amended to add "...except that those costs incurred in conformance with the requirements of R.C. section 4928.143(B)(2)(c) shall be avoidable"<sup>1</sup>.

The Competitive Suppliers believe that Rule 4901:1-40-03 (A) (3) is accurate, clear and concise, as written and that proposed modifications could instead create unnecessary ambiguity.

<sup>1</sup> See Request for Rehearing of the Dayton Power and Light Company p. 29

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Thus, the Competitive Suppliers urge the Commission not to grant rehearing as to Rule 4901:1-40-03-(A)(3).

## **II. Rule 4901:1-40-03(A) (3)**

The statutory scheme of Senate Bill 221 via Section 4928.64, Revised Code creates a mandate that all energy supplies provided to retail customers in this State meet a portfolio standard in which a minimum percentage of the energy delivered comes from renewable and/or advanced sources. Since electric service companies, which includes all competitive retail electric service providers, governmental aggregation providers, brokers and marketers<sup>2</sup>, must meet the renewable \ advanced energy portfolio standards, Section 4928.64 (E), Revised Code states in part:

All costs incurred by an electric distribution utility in complying with the requirements of this section shall be by-passable by any consumer that has exercised choice of supplier under section 4928.03 of the Revised Code.

Section 4928.64(E), Revised Code thus protects retail customers who exercise their right to shop for energy from having to pay for renewable or advanced generation they do not receive. Rule 4901:1-40-03(A) (3) is virtually a restatement of Section 4928.64(E), Revised Code, and as such any amendment to the Rule must be carefully scrutinized to insure that the intent of the General Assembly is not being thwarted.

The Commentator seeking re-hearing suggests that Rule 4901:1-40-03(A) (3) be amended by adding an exemption for Section 4928.143(B)(2)(c), Revised Code. Section 4928.143(B)(3)(c), Revised Code however does not pertain to renewable or advanced energy. Section 4928.143(B)(3)(c) permits the electric utility to impose a non by-passable charge if the charge is needed to support the construction of new generation – brown or green – where the

utility has applied for and the Commission has found: 1) additional generation is needed; 2) the new generation will come from new plants; 3) the new plants will be dedicated to the public; and 4) the new plants will be publicly bid. Since the Rule in question only addresses compliance with the portfolio requirements in Section 4928.64, Revised Code, it would be confusing and create ambiguity to add a reference to Section 4928.143(B)(3)(c), Revised Code when that Code Section does not refer to Section 4928.64, Revised Code in general or the portfolio standards in particular.

### **III. Conclusion**

WHEREFORE, the Competitive Suppliers request that the Commission not grant re-hearing on Rule 4901:1-40-03(A) (3).

Respectfully submitted,

CONSTELLATION NEWENERGY, INC.  
DIRECT ENERGY SERVICES, LLC  
INTEGRYS ENERGY SERVICES, INC.



M. Howard Petricoff  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Telephone: (614) 464-5414  
Facsimile: (614) 719-4904  
E-mail: mhpetricoff@vorys.com

Counsel for Constellation NewEnergy, Inc.; Direct  
Energy Services, LLC; and Integrys Energy  
Services, Inc.

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<sup>2</sup> Section 4928.01 (A)(9), Revised Code

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Application For Rehearing was served upon the following persons this 27<sup>th</sup> day of May, 2009 via electronic mail or via U.S. first class mail, postage prepaid.



M. Howard Petricoff

Dona R. Seger-Lawson  
Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
dona.seger-lawson@dpline.com

Marvin I. Resnik  
AEP Service Corp  
1 Riverside Plaza  
Columbus, OH 43215-2355  
miresnik@aep.com

Leigh Herington, Executive Director  
NOPEC  
31320 Solon Rd., Ste. 20  
Solon, OH 44139  
nopec@windstream.net

Gregory E. Hitzhusen, MDIV, Ph.D.  
Executive Director  
Ohio Interfaith Power and Light  
PO Box 26671  
Columbus, OH 43226  
ohioipl@gmail.com

Ellis Jacobs  
333 W. First St., Ste. 500  
Dayton, OH 45402  
Ejacobs@ablelaw.org

Joseph Logan  
Ohio Farmers Union  
20 S. Third St., Ste. 130  
Columbus, OH 43215  
j-logan@ohfarmersunion.org

Gene Krebs  
Greater Ohio  
846½ E. Main Street  
Columbus, OH 43205

Amy Gomberg  
Environment Ohio  
203 E. Broad St., Ste. 3  
Columbus, OH 43215  
agomberg@environmentOhio.org

Theodore Robinson  
Citizen Power  
2424 Dock Road  
Madison, OH 44057  
robinson@citizenpower.com

Tim Walters  
United Clevelanders Against Poverty  
4115 Bridge Avenue  
Cleveland, OH 44113  
Trane222222@aol.com

Brandi Whetstone  
Sierra Club, Ohio Chapter  
131 N. High Street, Ste. 605  
Columbus, OH 43215

Joseph Meissner  
The Legal Aid Society of Cleveland  
1223 West Sixth Street  
Cleveland, OH 44113  
jpmeissn@lasclev.org

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima St.  
PO Box 1793  
Findlay, OH 45839-1793  
drinebolt@aol.com  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

Lance M. Keiffer  
Lucas County/NOAC  
711 Adam Street, 2<sup>nd</sup> Floor  
Toledo, OH 43624-1680  
[lkeiffer@co.lucas.oh.us](mailto:lkeiffer@co.lucas.oh.us)

Leslie A. Kovacik  
Dep. Of Law  
City of Toledo/NOAC  
420 Madison Ave., 4<sup>th</sup> Fl.  
Toledo, OH 43604  
[Leslie.kovacik@toledo.oh.gov](mailto:Leslie.kovacik@toledo.oh.gov)

Joseph G. Strines  
DPL Inc.  
1065 Woodman Drive  
Dayton, OH 45432  
[joseph.strines@DPLInc.com](mailto:joseph.strines@DPLInc.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)

Mark S. Yurick  
Chester, Willcox & Saxby  
65 E. State Street, Suite 1000  
Columbus, OH 43215-4213  
[myurick@cwslaw.com](mailto:myurick@cwslaw.com)

Noel M. Morgan  
Communities United for Action  
Legal Aid Society of Southwest Ohio  
215 E. Ninth Street  
Cincinnati, OH 45202  
[nmorgan@lascinti.org](mailto:nmorgan@lascinti.org)

Michael R. Smalz  
Joseph Maskovyak  
Ohio State Legal Services Association  
555 Buttles Ave.  
Columbus, OH 43215  
[msmalz@oslsa.org](mailto:msmalz@oslsa.org)  
[jmaskovyak@oslsa.org](mailto:jmaskovyak@oslsa.org)

Steve Millard  
Council of Smaller Enterprises  
The Higbee Building  
100 Public Square, Suite 210  
Cleveland, OH 44113  
[smillard@cose.org](mailto:smillard@cose.org)

Richard L. Sites  
Ohio Hospital Association  
155 E. Broad Street, 15<sup>th</sup> Floor  
Columbus, OH 43215-3620  
[ricks@ohanet.org](mailto:ricks@ohanet.org)

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

John W. Bentine  
Chester, Willcox & Saxby  
65 E. State Street, Suite 1000  
Columbus, OH 43215  
[jbentine@cwslaw.com](mailto:jbentine@cwslaw.com)

James S. Russell  
NAIOP  
470 Olde Worthington Road, Suite 200  
Westerville, OH 43082  
[jrussell@pizzuti.com](mailto:jrussell@pizzuti.com)

Steven T. Nourse  
AEP 1 Riverside Plaza  
Columbus, OH 43215  
[snourse@aep.com](mailto:snourse@aep.com)

Dale R. Arnold  
Ohio Farm Bureau Federation  
280 N. High Street  
P. O. Box 182383  
Columbus, OH 43218-2383  
[darnold@ofbf.org](mailto:darnold@ofbf.org)

Jason B. Keyes  
Keyes & Fox, LLP  
1721 21<sup>st</sup> Avenue East  
Seattle, WA 98112  
[jkeyes@keyesandfox.com](mailto:jkeyes@keyesandfox.com)

James W. Burk  
FirstEnergy Services Company  
76 S. Main Street  
Akron, OH 44308  
[burkj@firstenergycorp.com](mailto:burkj@firstenergycorp.com)

Joseph M. Clark  
McNees, Wallace & Nurick  
21 E. State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-4228  
[jclark@mwncmh.com](mailto:jclark@mwncmh.com)

Amy Ewing  
Greater Cincinnati Health Council  
2100 Sherman Avenue, Suite 100  
Cincinnati, OH 45212  
[aewing@gchc.org](mailto:aewing@gchc.org)

Thomas L. Froehle  
McNees Wallace & Nurick, LLC  
21 E. State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-4228  
[tfroehle@mwncmh.com](mailto:tfroehle@mwncmh.com)

Terrence O'Donnell  
Bricker & Eckler  
100 S. Third Street  
Columbus, OH 43215  
[todonnell@bricker.com](mailto:todonnell@bricker.com)

Glenn Krassen  
E. Brett Breitschwerdt  
Bricker & Eckler  
100 S. Third Street  
Columbus, OH 43215  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)  
[ebreitschwerdt@bricker.com](mailto:ebreitschwerdt@bricker.com)

Greg Dunn  
Schottenstein, Zox & Dunn Co., LPA  
250 West Street  
Columbus, OH 43215  
[gdunn@szd.com](mailto:gdunn@szd.com)

James Burk  
Ebony L. Miller  
FirstEnergy Corp.  
76 S. Main Street  
Akron, OH 44308  
[burkj@firstenergycorp.com](mailto:burkj@firstenergycorp.com)  
[elmiller@firstenergycorp.com](mailto:elmiller@firstenergycorp.com)

Sam Randazzo  
Lisa McAlister  
Dan Neilsen  
McNees, Wallace & Nurick  
21 E. State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-4228  
sam@mwncmh.com  
lmcaster@mwncmh.com  
dneilsen@mwncmh.com

Paul Colbert  
Duke Energy Ohio  
155 E. Broad Street, Suite 21  
Columbus, OH 43215  
pcolbert@cinergy.com

Jeffrey Small  
Richard Reese  
Terry Etter  
Maureen Grady  
Gregory Poulos  
Anne Hotz  
Larry Sauer  
Office of Ohio Consumers' Counsel  
10 W. Broad Street, Suite 1800  
Columbus, OH 43215-3485  
small@occ.state.oh.us  
reese@occ.state.oh.us  
etter@occ.state.oh.us  
grady@occ.state.oh.us  
poulos@occ.state.oh.us  
hotz@occ.state.oh.us  
sauer@occ.state.oh.us