

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

2009 SEP 14 PM 5:07

In the matter of the application of Ohio  
Edison Company to amend its electric  
generation supplier coordination tariff.

Case No. 09-0787-EL-ATA

PU C O

In the matter of the application of The  
Cleveland Electric Illuminating Company to  
amend its electric generation supplier  
coordination tariff.

Case No. 09-0788-EL-ATA

In the matter of the application of The  
Toledo Edison Company to amend its  
electric generation supplier coordination  
tariff.

Case No. 09-0789-EL-ATA

**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.

By separate motion, request for admission *Pro Hac Vice* for Cynthia Fonner Brady, Senior Counsel for Constellation, has been filed in the above-styled proceeding. Constellation asks that if approved she be added to the official service list along with David Fein, who is a representative corporate officer. Contact information for the additional counsel and corporate representative are provided in the attached Memorandum in Support.

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 SEP 15 2009

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/ 

M. Howard Petricoff (0008287)

Stephen M. Howard (0022421)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P. O. Box 1008

Columbus, Ohio 43216-1008

Tel. (614) 464-5414

Fax (614) 464-6350

Attorneys for Constellation NewEnergy, Inc. and  
Constellation Energy Commodities Group, Inc.

**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 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 more than 15,000 megawatts of load and more than 10,000 customers. CNE 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.

CNE currently provides service to retail electric customers in the First Energy service territories in Ohio.

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 in both regulated and deregulated energy markets. CCG is active in the PJM Interconnection, L.L.C. and Midwest Independent System Operator ("MISO") wholesale power markets, has sold power for wholesale delivery in Ohio, and provides power to The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy") for their Standard Service Offer customers pursuant to the competitive procurement event held in May 2009. CNE and CCG are subsidiaries of Constellation Energy Group, Inc.

In the instant matter, FirstEnergy filed applications (the "Applications") proposing to amend its Electric Generation Supplier Coordination tariff for each of its operating companies. Constellation has business interests in the State that will be affected by the outcome of the proceeding. As a potential supplier of electric power and energy in the State, Constellation has an interest in the instant proceeding as the Commission assesses the appropriate allocation and treatment of fuel and fuel-related expenses, and makes other decisions that will affect the viability of the competitive electric market in Ohio in which CCG provides electric power and other products and services to wholesale customers and in which CNE is a supplier of electric power and energy to retail customers.

This motion for intervention precedes all discovery or other procedural termination dates. The motion is also being filed more than five days before the hearing deadline established in

Rule 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, 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:

David I. Fein  
Vice President, Energy Policy - Midwest  
Constellation Energy Group, Inc.  
550 West Washington, Blvd., Suite 300  
Chicago, IL 60661  
312.704.8499  
david.fein@constellation.com

Cynthia Fonner Brady  
Senior Counsel  
Constellation Energy Resources, LLC  
550 West Washington, Blvd., Suite 300  
Chicago, IL 60661  
312.704.8518  
[cynthia.fonner@constellation.com](mailto:cynthia.fonner@constellation.com)

Respectfully Submitted,



---

M. Howard Petricoff (0008287)  
Stephen M. Howard (0022421)  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P. O. Box 1008  
Columbus, Ohio 43216-1008  
Tel. (614) 464-5414  
Fax (614) 464-6350

Attorneys for Constellation NewEnergy, Inc. and  
Constellation Energy Commodities Group, Inc.

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Motion for Leave to Intervene of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. was served upon James Burk, FirstEnergy Service Company, 76 South Main Street, Akron, OH 44308 by U.S. First Class Mail, this 14<sup>th</sup> day of September, 2009.

A handwritten signature in black ink, appearing to read "M. Howard Petricoff", written over a horizontal line.

M. Howard Petricoff