

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of an Application for the )  
Approval of a Corporate Separation Plan )  
Section 4928.17, Revised Code and 4901:1- )  
37, Ohio Administrative Code. )

Case No. 09-0462-EL-UNC

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**MOTION FOR LEAVE TO INTERVENE OF  
CONSTELLATION NEWENERGY, INC.**

Now comes Constellation NewEnergy, Inc. ("Constellation"), who, pursuant to Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, moves 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.

WHEREFORE, Constellation respectfully requests that the Commission grant this joint motion for leave to intervene and that Constellation NewEnergy, Inc. be made a full party of record.

Respectfully Submitted,



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**MEMORANDUM IN SUPPORT OF  
THE MOTION TO INTERVENE OF  
CONSTELLATION NEWENERGY, 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. CNE is a subsidiary of Constellation Energy Group, Inc.

In the instant matter, FirstEnergy filed an application (the "Application") proposing approval of its corporate separate plan in the period following FirstEnergy's divestiture of its generating assets. The corporate separation plan filed in this docket is a component of FirstEnergy's Market Rate Offer ("MRO") to procure supply to provide SSO electric generation service beginning on June 1, 2011 for FirstEnergy's retail electric customers. Constellation has business interests in the State that will be affected by the outcome of the proceeding. As a supplier of electric power and energy in the State, Constellation has an interest in the instant proceeding as the Commission assesses the manner in which FirstEnergy is permitted to deal with its affiliates, and makes other decisions that will affect the viability of the competitive electric market in Ohio 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 motion for leave to intervene and that CNE 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:

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Respectfully Submitted,



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 3<sup>rd</sup> day of November, 2009 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



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