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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval of the) Case No. 11-2641-EL-RDR
Establishment of Rider BTR and)
Associated Tariffs.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval of the) Case No. 11-2642-EL-RDR
Establishment of Rider RTO and)
Associated Tariffs.)

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

Pursuant to Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code ("OAC"), Constellation NewEnergy, Inc. moves for leave to intervene in this proceeding, in which Duke Energy Ohio, Inc. seeks approval of two new proposed riders. The reasons supporting the Motion to Intervene are set forth in the accompanying memorandum in support.

WHEREFORE, Constellation NewEnergy, Inc. respectfully requests that it be permitted to intervene in these matters.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

On April 26, 2011, Duke Energy Ohio, Inc. ("Duke") filed an Application for approval and establishment of a base transmission rate rider (Rider BTR) and a regional transmission organization rider (Rider RTO). Duke intends that Rider BTR and Rider RTO will replace the current Rider TCR upon its expiration on December 31, 2011. These riders will recover certain transmission-related costs, including network integration transmission costs (NITS), Midwest Transmission Expansion Planning (MTEP) costs, as well as other Federal Energy Regulatory Commission (FERC) approved costs including costs associated with the realignment of RTO membership and transmission expansion planning costs. Constellation NewEnergy, Inc. ("CNE") is a certified competitive retail electric service ("CRES") provider supplying generation service to many of Duke's customers, CNE will be affected by these rates and regulations. As a result, CNE is requesting that the Commission allow CNE to intervene in this proceeding.

A. The Commission's Standard For Intervention Requests

Section 4903.221, Revised Code, sets forth the criteria the Commission must consider when ruling on a motion to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

To implement the statutory provision the Commission promulgated Rule 4901-1-11(B) of the Ohio Administrative Code which specifies that when deciding whether to permit intervention, the Commission, Legal Director, Deputy Legal Director, or Attorney Examiner shall consider:

- (1) The nature and extent of the prospective intervenor's interest.
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.

As will be explained, CNE has a significant interest in the proposed Rider BTR and Rider RTO and meets all the remaining considerations of both the statute and the rule. CNE's interests in, and contributions to this proceeding require grant of this motion.

B. Constellation NewEnergy, Inc. and Its Interests In This Proceeding

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. 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 Ohio.

CNE has a real and substantial interest in this proceeding. Duke's proposed Rider BTR is a non-bypassable rider and, as a result, the costs associated with this rider will be paid directly by CNE's customers. Therefore, the costs collected under this Rider are significant to CNE. Further, Rider BTR and Rider RTO will recover the costs of Duke's transition from its current RTO, MISO, to PJM and these costs should be allocated neutrally for all customers. CNE seeks to ensure through its intervention that Riders BTR and RTO do not result in CRES customers paying more for this transition merely because they purchase from CRES rather than through the electric distribution utility.

CNE has been an active party before the Commission in numerous previous proceedings regarding transmission-related riders, including Duke's recent Market Rate Offer Application proceeding where Duke initially proposed Rider BTR and Rider RTO. *See In the Matter of the Application of Duke Energy Ohio for Application of a Market Rate Offer, et al*, No. 10-2586-EL-SSO. CNE participated extensively in that proceeding and specifically addressed Duke's proposed Rider BTR and Rider RTO. 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. Further, CNE's intervention is timely and will not unduly delay this proceeding.

Conclusion

CNE has a real and substantial interest in this proceeding and clearly has expertise and perspective that will assist the Commission in making the required legal determinations. CNE has moved timely to request intervention in this proceeding and submits that it will participate on a timely basis and in a substantive fashion that will allow the Commission to reach a determination on Duke's proposed Rider BTR and Rider RTO consistent with the Commission's statutory obligations, precedent, and policies. Further, the failure to grant intervention in this case will impede the ability of CNE to protect and defend its interests and the interests of its customers. In sum, CNE has met the Commission's standards for intervention.

For these reasons, CNE respectfully requests that the Commission find that CNE's motion to intervene be granted in accordance with R.C. 4903.221 and OAC Rule 4901-1-11.

Respectfully submitted,



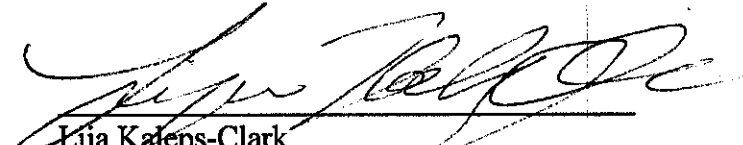
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene was served upon the following persons via email this 4th day of May, 2011.


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