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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
Duke Energy Ohio for Authority to)
Establish a Standard Service Offer)
Pursuant to Section 4928.143, Revised) Case No. 11-3549-EL-SSO
Code, in the Form of an Electric)
Security Plan, Accounting)
Modifications and Tariffs for)
Generation Service.)

In the Matter of the Application of)
Duke Energy Ohio for Authority to) Case No. 11-3550-EL-ATA
Amend its Certified Supplier Tariff,)
P.U.C.O. No. 20.)

In the Matter of the Application of)
Duke Energy Ohio for Authority to) Case No. 11-3551-EL-UNC
Amend its Corporate Separation Plan.)

**Direct Testimony
In Support of
October 24, 2011 Stipulation
Of
David I. Fein
On Behalf of
The Retail Energy Supply Association**

Dated: October 28, 2011

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1 **I. INTRODUCTION**

2 **A. Identification of Witness**

3 **Q. Please state your name and your business address.**

4 **A.** My name is David I. Fein, and my business address is 550 West
5 Washington Boulevard, Suite 300, Chicago, Illinois 60661.

6

7 **Q. By whom are you employed?**

8 **A.** I am employed by Constellation Energy Group, Inc.

9

10 **Q. Please describe your position with Constellation.**

11 **A.** I am Vice President of Energy Policy in the Midwest and Pennsylvania for
12 Constellation as well as Director of Retail Energy Policy. On
13 Constellation's behalf I am also presenting testimony concerning how the
14 Stipulation in the matter at bar impacts Constellation. A more complete
15 description of my duties with Constellation is contained in that direct
16 prepared testimony.

17

18 **Q. Please describe your educational and business experience.**

19 **A.** From an educational perspective, I earned a Bachelor of Arts in Political
20 Science and Behavioral Science & Law from the University of Wisconsin-
21 Madison in 1989 and a Juris Doctorate from DePaul University College of
22 Law in 1993. I am a member of the American, Chicago, Energy, and
23 Illinois State Bar Associations. I have more than 19 years of experience in
24 all facets of the energy industry. Previously, I served as Senior Regulatory

1 Counsel for Constellation and was responsible for providing legal and
2 regulatory support to all of the regulatory activities of Constellation
3 NewEnergy, Inc. (“CNE”) before state and federal regulatory agencies
4 across the country and in Canada. In addition, I acted as Senior Counsel
5 providing primary legal support and counsel for all of CNE’s commercial
6 activities in Illinois and Alberta, Canada as well as support for other
7 markets. My previous experience prior to joining Constellation includes
8 five-and-a-half years at DLA Piper, LLP, a 3,600-lawyer law firm,
9 specializing in energy and telecommunications law and regulation and
10 four-and-a-half years as an Assistant State’s Attorney, in the Illinois Cook
11 County State’s Attorney’s Office, focusing on public utility law and
12 regulation.

13

14 **Q. On whose behalf are you testifying?**

15 **A.** I am testifying on the Retail Energy Supply Association (“RESA”).
16 Currently, I serve as the President of RESA as well as the Chair of its Ohio
17 Electric group.

18

19 **Q. Please describe RESA.**

20 **A.** RESA is a national trade association made up of a diverse group of retail
21 energy suppliers who share the common vision that competitive retail
22 energy markets deliver a more efficient, customer-oriented outcome than
23 the traditional monopoly utility structure. Several RESA members are
24 certificated as competitive retail electric service (“CRES”) providers and

1 active in the Ohio retail market. Specifically, some of RESA's members
2 currently provide CRES service to residential, commercial, industrial, and
3 governmental customers in Ohio including customers in the Duke Energy
4 Ohio service area. RESA's members include ConEdison Solutions;
5 Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Exelon
6 Energy Company; GDF Suez Energy Resources NA, Inc.; Green Mountain
7 Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just
8 Energy; Liberty Power; MC Squared Energy Services, LLC; NextEra
9 Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus;
10 and Reliant Energy Northeast LLC.

11

12 **Q. Please describe RESA's interest in this proceeding.**

13 **A.** RESA has an interest in participating in the instant proceeding as its
14 members provide electric power and energy to retail customers in the Duke
15 Energy service territory. Further, RESA members, because they
16 participate in the competitive retail markets in Ohio and across the country
17 can bring the experience and best practices in other states and utility
18 service areas.

19

20 **II. SUPPORT OF THE STIPULATION AND RECOMMENDATION**

21 **Q. What is the purpose of your testimony?**

22 **A.** To present the reasons that RESA supports the Stipulation and
23 Recommendation ("Stipulation") and why we believe Commission
24 approval of the Stipulation will be in the public interest. For the reasons

1 stated below, unlike the Application, RESA believes the Stipulation is a
2 reasonable compromise and resolution of the issues. Based upon the
3 advice of counsel, RESA believes that the Stipulation is not in violation of
4 any statute or regulatory principle and is in the public interest. Thus,
5 RESA supports the Commission's approval of the Stipulation as presented.
6

7 **Q. Please summarize why RESA supports the Stipulation.**

8 **A.** The Stipulation provides settlement of a number of important issues that
9 will lead to further development of the competitive market in the Duke
10 Energy Ohio service territory. Those include:

- 11 • The use of a competitive wholesale procurement process to establish
12 the SSO;
- 13 • The transfer of Duke Energy Ohio's legacy generation assets into a
14 separate subsidiary;
- 15 • The development of a variety of retail market enhancements, including:
 - 16 ○ Development of a secure, web-based system that will provide
17 electronic access to key customer usage and account data that
18 can be accessed via a secure, supplier website that presents a
19 variety of data and information. In the interim, Duke Energy
20 Ohio agrees that certain information will be added to the
21 existing web system;
 - 22 ○ The provision of certain types of data via EDI transactions;

- 1 ○ A quarterly updated sync list to CRES providers showing the
- 2 accounts that are enrolled with the CRES provider and certain
- 3 other data and information;
- 4 ○ The required interval meter threshold size requirement will
- 5 change from 100kW to 200kW;
- 6 ○ A collaborative process to discuss the deployment of an electric
- 7 vehicle (EV) ecosystem that works in tandem with a competitive
- 8 retail market; and
- 9 ○ Annual meetings or conference calls with registered CRES
- 10 providers to discuss supplier coordination issues affecting CRES
- 11 providers, including but not limited to CRES consolidated
- 12 billing.
- 13 • A guarantee that all energy efficiency programs and rebates are
- 14 available at the same terms and conditions to customers, regardless of
- 15 whether they purchase generation service from a CRES provider or
- 16 Duke Energy Ohio.
- 17 • SmartGrid meters and data are available to all customers on a
- 18 competitively neutral basis and without regard to their status as a
- 19 shopping or non-shopping customer.
- 20 • The switching fee will be reduced from \$7.00 to \$5.00.
- 21 • Bill-ready billing will be made functional and available as soon as
- 22 commercially and reasonably practicable, but in no event later than
- 23 September 30, 2013.

- 1 • The per-bill charges for consolidated, bill-ready billing will be reduced
2 to 50 percent of the existing rate.

3
4 **Q. Please explain why it is important that this ESP address retail**
5 **competition in Duke Energy Ohio’s service territory and not**
6 **only a wholesale procurement.**

7 **A.** Of all the Ohio utilities today Duke Energy has the most thriving
8 competitive retail market. There are multiple suppliers behind Duke
9 serving customers of all classes from residential to industrial. An ESP
10 which focused solely on wholesale procurement while good for expanding
11 market reflective POLR service is pointless if customers no longer have the
12 ability to shop. This settlement balances both sides of a competitive
13 market by eliminating certain barriers to information that limit the types
14 of retail supplier offers and raise costs to reach customers.

15
16 **Q. Please discuss why you believe that Duke Energy’s ESP will**
17 **promote the continued and further development of retail**
18 **competition within its service territory.**

19 **A.** The Stipulation takes a number of important steps to facilitate the ability
20 of CRES providers to provide competitive service to retail customers.
21 Specifically, paragraphs IV. O, P, and T of the Stipulation address many of
22 these important matters and they are listed above. As discussed above,
23 under the Stipulation, Duke Energy Ohio has agreed to modify their
24 existing retail tariffs and business practices so that CRES providers are

1 provided with a plethora of enhanced data and information to better
2 enable the development of retail competition.

3

4 **Q. Why is it important that such information be provided to CRES**
5 **Providers?**

6 **A.** By providing this type of data and information, CRES providers will be
7 better able to provide services to prospective customers, better able to
8 meet the needs of existing customers, and better able to manage their
9 businesses. More accurate and timely data allows suppliers to offer more
10 customized price offerings to customers upfront rather than relying on
11 customers to provide copies of their bills to receive more customized CRES
12 offers. Further, provision of this type of data and information allows a
13 CRES Provider to provide a prospective customer with a competitive offer
14 for electric service, check the enrollment status of a new customer, and
15 perform other functions designed to better serve customers.

16

17 **Q. Are there any more granular or specific issues associated with**
18 **access to interval data for customers with interval meters?**

19 **A.** Yes. If CRES providers do not receive timely and accurate delivery of
20 interval data, this not only impacts suppliers' ability to provide price
21 quotations to customers but also frustrates their ability to issue an invoice
22 to a customer on a timely basis, which inconveniences customers and
23 increases suppliers' costs.

24

1 **Q. Does the Stipulation address the billing options that are**
2 **available for CRES providers?**

3 **A.** Yes, in a couple respects. First, Duke Energy Ohio has agreed to make the
4 Bill Ready utility consolidated bill option functional. Second, Duke Energy
5 Ohio has agreed to discuss Supplier Consolidated Billing options with
6 interested CRES providers. Third, Duke Energy Ohio has agreed to
7 implement a Purchase of Accounts Receivables (PAR) program with a zero
8 discount and the flexibility that allows CRES providers to determine which
9 customers and/or classes of customers that utilize the PAR program.

10

11 **Q. Are there any other aspects of the Stipulation that RESA would**
12 **like to comment on?**

13 **A.** Yes. The Stipulation sets up a collaborative to work on electric vehicle
14 issues. The electric vehicles collaborative will allow various market
15 participants the opportunity to discuss policy and other issues related to
16 successful deployment of electric vehicles and their supporting
17 infrastructure.

18

19 **Q. Do you have any final comments on how the Stipulation will**
20 **better promote retail competition in the Duke Energy service**
21 **territory?**

22 **A.** Yes. By approving the Stipulation, the Commission will establish a
23 framework that will better support the continued development of retail

1 competition, large-scale government aggregation, and competitive
2 wholesale electric markets.

3
4 **III. CONCLUSION AND SUMMARY OF RECOMMENDATIONS**

5 **Q. Please summarize your conclusions and recommendations**
6 **regarding the Stipulation in Duke Energy Ohio's ESP.**

7 **A.** RESA believes that the Stipulation was negotiated among knowledgeable
8 and informed parties. Support for the Stipulation is widespread and
9 virtually unanimous and covers a broad and diverse group of stakeholder
10 interests. Based upon the advice of counsel, RESA believes that the
11 Stipulation violates no law, rule or regulatory principle. Finally, the
12 Stipulation will move Duke Energy Ohio into a competitive wholesale
13 market which should be of great benefit to all retail customers. This
14 should also lead to a more workable market structure that will lead to the
15 further development of retail and wholesale competition to the benefit of
16 Duke Energy Ohio consumers.

17
18 The Commission has an opportunity to be a steadying force in the
19 continued evolution of the competitive electric market in Ohio. The
20 resolution of the issues pertaining to Duke Energy's ESP as presented in
21 the Stipulation is the best means for the procurement of SSO. Pursuant to
22 the Stipulation, Duke Energy's ESP will bring the benefits of wholesale
23 competition to customers who do not choose a competitive alternative to

1 Duke Energy's SSO and should help foster the continued evolution of the
2 competitive retail electric market.

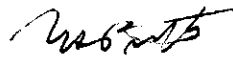
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4 **Q. Does this conclude your testimony?**

5 **A. Yes.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 28th day of October, 2011 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



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