

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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 Intervenor  
Constellation NewEnergy, Inc.  
Constellation Energy Commodities  
Group, Inc.**

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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. In my role as  
13       Vice President of Energy Policy in the Midwest and Pennsylvania, I am  
14       responsible for directing and implementing regulatory and legislative  
15       policies for Constellation's retail, wholesale, and merchant generation  
16       business interests in Illinois, Michigan, Ohio, and Pennsylvania. In my  
17       role as Director of Retail Energy Policy, I am responsible for coordinating  
18       Constellation's retail energy policy advocacy across the country.  
19       Constellation, a FORTUNE 200 company, is the nation's largest  
20       competitive supplier of electricity to commercial, industrial, and  
21       governmental customers and the nation's largest wholesale power seller.  
22       Constellation is also an active supplier of electric power and energy to  
23       residential customers. Constellation also manages fuels and energy  
24       services on behalf of energy-intensive industries and utilities. It owns a

1       diversified fleet of 78 generating units located throughout the United  
2       States, totaling approximately 8,700 megawatts of generating capacity.

3  
4   **Q.   Please describe your educational and business experience.**

5   **A.**   From an educational perspective, I earned a Bachelor of Arts in Political  
6       Science and Behavioral Science & Law from the University of Wisconsin-  
7       Madison in 1989 and a Juris Doctorate from DePaul University College of  
8       Law in 1993. I am a member of the American, Chicago, Energy, and  
9       Illinois State Bar Associations. I have more than 19 years of experience in  
10      all facets of the energy industry. Previously, I served as Senior Regulatory  
11      Counsel for Constellation and was responsible for providing legal and  
12      regulatory support to all of the regulatory activities of Constellation  
13      NewEnergy, Inc. ("CNE") before state and federal regulatory agencies  
14      across the country and in Canada. In addition, I acted as Senior Counsel  
15      providing primary legal support and counsel for all of CNE's commercial  
16      activities in Illinois and Alberta, Canada as well as support for other  
17      markets. My previous experience prior to joining Constellation includes  
18      five-and-a-half years at DLA Piper, LLP, a 3,600-lawyer law firm,  
19      specializing in energy and telecommunications law and regulation and  
20      four-and-a-half years as an Assistant State's Attorney, in the Illinois Cook  
21      County State's Attorney's Office, focusing on public utility law and  
22      regulation.

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

2   **A.    I am testifying on behalf of Constellation NewEnergy, Inc., Constellation**  
3       **Energy Commodities Group, Inc. (jointly referred to as “Constellation”).**

4

5   **Q.    Please provide some background on the Constellation**  
6       **companies on whose behalf you are testifying in the instant**  
7       **proceeding.**

8   **A.    CNE provides electricity and energy-related services to retail customers in**  
9       **Ohio as well as in 16 other states, the District of Columbia and in Canada.**  
10       **CNE holds a certificate as a competitive retail electric supplier (“CRES”)**  
11       **from the Public Utilities Commission of Ohio (“Commission”) to engage in**  
12       **the competitive sale of electric service to retail customers in Ohio. CNE**  
13       **currently markets the provision of electric power to retail electric**  
14       **customers in Ohio, including in the Duke Energy Ohio, AEP Ohio, and**  
15       **Ohio Edison Company, The Cleveland Electric Illuminating Company, and**  
16       **The Toledo Edison Company (“FirstEnergy”) service territories. CCG**  
17       **provides wholesale power and risk management services to wholesale**  
18       **customers (distribution utilities, co-ops, municipalities, power marketers,**  
19       **utilities and other large load serving entities), throughout the United States**  
20       **and Canada, in both regulated and restructured, competitive energy**  
21       **markets. CCG is active in the PJM Interconnection, L.L.C. (“PJM”) and**  
22       **Midwest Independent System Operator (“MISO”) wholesale power**  
23       **markets and has sold power for wholesale delivery in Ohio. CNE and CCG**  
24       **are subsidiaries of Constellation Energy.**

1   **Q.    Please describe Constellation’s interest in this proceeding.**

2   **A.**   As a potential bidder in Duke Energy’s competitive procurement process  
3       (“CBP”), and an active participant in CBPs around the country, CCG has an  
4       interest in participating in the instant proceeding as the Commission  
5       assesses the Duke Energy’s plan, and makes other decisions that will affect  
6       the viability of the competitive retail market in which CCG provides electric  
7       power and other products and services to retail electric suppliers. CNE  
8       also has an interest in participating in the instant proceeding as a supplier  
9       of electric power and energy to retail customers in the Duke Energy service  
10      territory, based on its status as a CRES provider. Due to its unique  
11      expertise and participation in the competitive retail and wholesale markets  
12      in Ohio and across the country, Constellation will be able to assist in the  
13      development of a full and complete record to assist the Commission in its  
14      consideration of the Application.

15

16   **Q.    Please discuss Constellation’s commitment to Ohio and Ohio**  
17       **consumers.**

18   **A.**   Constellation has been an active participant before the Commission and  
19       the General Assembly for a number of years. In fact, Constellation was an  
20       ardent advocate in the wake of the passage of Senate Bill 221 for the use of  
21       a CBP as a better means for setting the rates that would be charged to SSO  
22       customers in the FirstEnergy service territory. The results of the  
23       FirstEnergy May 2009 auction demonstrated the benefits of competitive  
24       wholesale procurement as the resulting retail rates were set through

1 robust, competitive market forces; the May 2009 auction resulted in  
2 generation rate decreases for a large number of FirstEnergy consumers. In  
3 addition, by setting retail rates based upon a CBP, and eliminating a  
4 number of legacy impediments to the development of retail competition,  
5 the retail market in the FirstEnergy service territory began to develop,  
6 providing customers with more opportunities to choose, while nevertheless  
7 being able to rely on competitively-priced backstop SSO supply.

8  
9 Constellation's advocacy in support for competitive retail and wholesale  
10 market reforms has been consistent and well-documented before the  
11 Commission as it has grappled with electric security plans ("ESPs") and  
12 market rate offer ("MRO") plans of all of the Ohio electric distribution  
13 utilities.

14  
15 While Senate Bill 221 tasked the Commission with balancing a number of  
16 competing and conflicting goals as it determines whether to approve Duke  
17 Energy's Application in this proceeding, the instant proceeding provides  
18 the Commission with an opportunity to continue to establish a more  
19 stable, transparent, and efficient electric marketplace in Ohio as well as  
20 send a clear signal to market participants that the Commission supports  
21 the development of a robust competitive retail and wholesale marketplace.

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

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

3    **A.**    To present the reasons that Constellation supports the Stipulation and  
4           Recommendation (“Stipulation”) and why we believe Commission  
5           approval of the Stipulation will be in the public interest. For the reasons  
6           stated below Constellation believes the Stipulation is a reasonable  
7           compromise and resolution of the issues. Based upon the advice of  
8           counsel, Constellation believes that the Stipulation is not in violation of  
9           any statute or regulatory principle and is in the public interest. Thus,  
10          while Constellation noted in its intervention issues with the application, it  
11          supports the Commission’s approval of the Stipulation as presented.

12  
13   **Q.    Please summarize why Constellation supports the Stipulation.**

14   **A.**    As an initial matter, the Stipulation embraces continued reliance on the  
15          competitive market model as the best means to meet the needs of Ohioans.  
16          Those include:

- 17          •    Competition – both at the wholesale level for procuring SSO energy  
18                  and at the retail level for customers that choose to shop – will keep  
19                  costs as low as possible and produce the following benefits that  
20                  customers and policymakers are seeking across the United States:
- 21          •    Advancements in reliability, conservation, renewable energy  
22                  development, and the ability of customers to purchase green power  
23                  products. In addition, a competitive market model will allow the



1 marketplace to respond to any future (federal or state) climate  
2 regulation in the most cost competitive manner.

- 3 • A superior platform to promote demand response and energy  
4 efficiency (as compared to traditional cost-of-service regulation). In  
5 cases where consumers do not pay actual market prices, they have  
6 little or no incentive to reduce consumption during times when  
7 production costs are significantly higher (or defer consumption to  
8 periods in which there is lower system demand).
- 9 • The ability and information to make decisions and have choices  
10 regarding their electric power needs -- just as they do with their  
11 telecommunications, natural gas, and airline choices, which industries  
12 were also previously under a monopoly system of regulation.
- 13 • The confidence that those that choose not to shop will nevertheless  
14 benefit from SSO rates that are the result of downward competitive  
15 pressure through a process to obtain the lowest competitive costs for  
16 electricity supply from winning bidders in a pool of qualified suppliers  
17 active in the broader competitive wholesale RTO markets.
- 18 • Innovation that will lead to new products and services and customized  
19 products to meet the needs of customers.

1 **Q. Please describe some of the specific aspects of the Stipulation**  
2 **that will lead to further development of the competitive market**  
3 **in the Duke Energy Ohio territory.**

4 **A.** There are a number of important aspects of the settlement that will lead to  
5 further development of the competitive market in the Duke Energy Ohio  
6 service territory. Those include:

- 7 • The use of a competitive wholesale procurement process to establish  
8 the SSO
- 9 • The movement of Duke Energy Ohio into the PJM RPM construct at  
10 the end of the current FRR and possibly earlier if permitted by PJM.
- 11 • The development of a variety of retail market enhancements, including:
  - 12 ○ Development of a secure, web-based system that will provide  
13 electronic access to key customer usage and account data that  
14 can be accessed via a secure, supplier website that presents a  
15 variety of data and information. In the interim, Duke Energy  
16 Ohio certain information will be added to the existing web  
17 system;
  - 18 ○ The provision of certain types of data via EDI transactions;
  - 19 ○ A quarterly updated sync list to CRES providers showing the  
20 accounts that are enrolled with the CRES provider and certain  
21 other data and information;
  - 22 ○ The required interval meter threshold size requirement will  
23 change from 100kW to 200kW;

1           ○ A collaborative process to discuss the deployment of an electric  
2           vehicle (EV) ecosystem that works in tandem with a competitive  
3           retail market; and

4           ○ Annual meetings or conference calls with registered CRES  
5           providers to discuss supplier coordination issues affecting CRES  
6           providers, including but not limited to CRES consolidated  
7           billing.

8       • All energy efficiency programs and rebates are available at the same  
9       terms and conditions to customers, regardless of whether they  
10      purchase generation service from a CRES provider or Duke Energy  
11      Ohio.

12     • SmartGrid meters and data are available to all customers on a  
13     competitively neutral basis and without regard to their status as a  
14     shopping or non-shopping customer.

15     • The switching fee will be reduced from \$7.00 to \$5.00.

16     • Bill-ready billing will be made functional and available as soon as  
17     commercially and reasonably practicable, but in no event later than  
18     September 30, 2013.

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

1       **A. The Stipulation Will Rely Upon Competitive Wholesale**  
2       **Procurement To Meet The Needs of SSO Customers**  
3

4       **Q.     Please discuss the CBP mechanism and discuss how it compares**  
5       **with the competitive procurement processes used in other**  
6       **States.**

7       **A.**     Constellation has long advocated for the use of competitive wholesale  
8       solicitations to meet the electric power and energy needs of Duke Energy  
9       Ohio's SSO customers as an open, non-discriminatory, and transparent  
10      process that utilizes a request for proposal or auction process to seek such  
11      electric power and energy needs is a much more preferable structure to  
12      meet the needs of Duke Energy Ohio's customers and to promote the  
13      development of retail competition.

14  
15      Under the Stipulation, Duke Energy Ohio and the Parties have agreed to  
16      the use of a competitive wholesale procurement process (CBP) for the  
17      establishment of the SSO. The CBP will be an auction-type format similar  
18      to that currently used by Ohio Edison, Toledo Edison and Cleveland  
19      Electric Illuminating (FirstEnergy). The CBP will be immediate, with a  
20      competitive wholesale procurement set for December 2011.

21  
22      A key to a successful competitive wholesale procurement process is one in  
23      which there is a high degree of transparency and confidence in the rules  
24      and the design so that potential suppliers possess all of the necessary  
25      information to effectively participate. The CBP as outlined in the

1 Stipulation and the Application will contain such measures. Duke Energy  
2 has proposed use of a CBP in the form of an auction that is generally  
3 consistent with the procurement mechanism used most recently in Ohio  
4 by FirstEnergy, and as utilized in numerous other restructured electric  
5 markets (including MISO and PJM), especially those in which regulated  
6 electric utilities no longer own generating assets – these jurisdictions  
7 include, but are not limited to, Pennsylvania, Maryland, D.C., Delaware,  
8 New Jersey, Connecticut, Maine, and Massachusetts. The goal of any  
9 competitive process should be to attract the maximum number of qualified  
10 participants and to solicit the best offer possible from those participants.  
11 The design of Duke Energy’s CBP should lead to such a result.

12  
13 **Q. Please describe the specific features of Duke Energy’s CBP that**  
14 **should lead to a successful procurement process.**

15 A. The important features of the CBP include:

- 16 • The provision of a wide range of data and information for interested  
17 bidders;
- 18 • The use of an independent manager for the CBP;
- 19 • The use of a standard master supply agreement for all participants;
- 20 • The creation of a website that is dedicated to the CBP that will contain  
21 necessary information about the CBP, receive updates, ask questions,  
22 and have access to data that will better assist participants in the  
23 formulation of bids; and

- The inclusion of well-crafted bidding rules which are incorporated as part of the Stipulation.

It has been our experience that this type of information has been provided to interested suppliers in the ongoing FirstEnergy auctions and in competitive procurement processes in other states, providing bidders with greater certainty regarding the load that is likely to be served, which leads to more accurate and competitive bids than would otherwise be possible.

Further, well-crafted bidding rules will also attract a larger number and diverse set of suppliers which in turn would lead to more competitive procurement process. Finally, the Stipulation provides for a collaborative stakeholder process prior to any future proposals for a CBP. There are various products and approaches to conducting competitive bidding to meet the standard service offer requirements of the Ohio electric utilities.

It has been our experience that an open collaborative stakeholder process is an excellent way in which to consider various products and approach to competitive wholesale procurement.

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

**A.** Yes. As part of the negotiations, the actual terms of the Master Supply Agreement (MSA) between the winning suppliers and Duke Energy Ohio, including credit provisions, are incorporated as part of the Stipulation. Duke Energy Ohio has also agreed to establish a website that will contain a

1 large amount of data and information to assist potential bidders in  
2 preparing bid submissions. Having a website with robust data and  
3 information that is easily accessible by potential bidders, a comprehensive  
4 and uniform MSA, and related Bidding Rules will enhance participation in  
5 the auction. All of these measures will facilitate the ability of Duke  
6 Energy Ohio to proceed with the planned December auction and should  
7 encourage robust bidder participation.

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**B. The Stipulation Supports the  
Continuing Development of Retail Competition**

**Q. Please discuss how Duke Energy's ESP will affect the continued development of retail competition within its service territory.**

**A.** The Stipulation takes a number of important steps to facilitate the ability of CRES providers to provide competitive service to retail customers. Specifically, paragraphs IV. O, P, and T of the Stipulation address many of these important matters. As discussed above, under the Stipulation, Duke Energy Ohio has agreed to modify their existing retail tariffs and business practices so that CRES providers are provided with a plethora of enhanced data and information to better enable the development of retail competition.

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

**A.** By providing this type of data and information, CRES providers will be better able to provide services to prospective customers, better able to meet the needs of existing customers, and better able to manage their businesses. Further, provision of this type of data and information allows a CRES Provider to provide a prospective customer with a competitive offer for electric service, check the enrollment status of a new customer, and perform other functions designed to better serve customers. The Commission should direct Duke Energy to allow CRES Providers to obtain



1       such usage and account information, including interval data through a  
2       website or through other electronic means.

3

4   **Q.   What can happen if this type of data and information is not**  
5   **provided on a timely basis?**

6   **A.**   Unnecessary delays in the provision of this data and information can have  
7       a negative effect on the ability to contract with customers, render invoices,  
8       and provide other services to consumers. Ultimately, given the fact that  
9       pricing may change during the intervening time, a customer may be  
10      economically harmed.

11

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

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

19

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

22   **A.**   Yes, in several respects. First, Duke Energy Ohio has agreed to make the  
23       Bill Ready utility consolidated bill option functional. Second, Duke Energy

1 Ohio has agreed to discuss Supplier Consolidated Billing options with  
2 interested CRES providers. Third, Duke Energy Ohio has agreed to  
3 implement a Purchase of Accounts Receivables program.

4  
5 **Q. Do you have any final comments on how the Stipulation will**  
6 **better promote retail competition in the Duke Energy service**  
7 **territory?**

8 **A.** Yes. By approving the Stipulation, the Commission will establish a  
9 framework that will better support the continued development of retail  
10 competition, large-scale government aggregation, and competitive  
11 wholesale electric markets.

12  
13 **III. CONCLUSION AND SUMMARY OF RECOMMENDATIONS**

14 **Q. Please summarize your conclusions and recommendations**  
15 **regarding Duke Energy's ESP Application.**

16 **A.** Constellation believes that the Stipulation was negotiated among  
17 knowledgeable and informed parties. Support for the Stipulation is  
18 widespread and virtually unanimous and covers a broad and diverse group  
19 of stakeholder interests. Based upon the advice of counsel, Constellation  
20 believes that the Stipulation violates no law, rule or regulatory principle.  
21 Finally, the Stipulation will move Duke Energy Ohio into a competitive  
22 wholesale market which should be of great benefit to all retail customers.  
23 This should also lead to a more workable market structure that will lead to

1 the further development of retail and wholesale competition to the benefit  
2 of Duke Energy Ohio consumers.

3

4 The Commission has an opportunity to be a steadying force in the  
5 continued evolution of the competitive electric market in Ohio. Duke  
6 Energy's ESP is the best means for the procurement of SSO. Duke  
7 Energy's ESP will bring the benefits of wholesale competition to customers  
8 that do not choose a competitive alternative to Duke Energy's SSO and  
9 should help foster the continued evolution of the competitive retail electric  
10 market.

11

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

13 **A. Yes**

### CERTIFICATE OF SERVICE

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



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