

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Authority to Establish) Case No. 22-1129-EL-ATA
New or Amended Rate Schedules and Tariffs)

**MOTION TO INTERVENE
AND
MEMORANDUM IN SUPPORT OF
CONSTELLATION ENERGY GENERATION, LLC
AND
CONSTELLATION NEW ENERGY, INC.**

Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively, “Constellation”) move to intervene in this proceeding as full parties of record under Ohio Revised Code Section (“R.C.”) 4903.221 and Ohio Administrative Code (“Rule”) 4901-1-11. The reasons supporting this request for intervention are contained in the accompanying Memorandum in Support. Constellation respectfully requests that the Public Utilities Commission of Ohio (“Commission”) grant this motion to intervene and that Constellation be made a full party of record.

Respectfully Submitted,

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**MEMORANDUM IN SUPPORT OF
THE MOTION TO INTERVENE**

R.C. 4903.221 and Rule 4901-1-11 establish the standard for intervention in the above-styled proceeding as a full party of record. R.C. 4903.221 states that the Commission 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; and (4) whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues. Rule 4901-1-11 states in part:

(A) 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.

A review of these factors in light of the following facts supports granting intervention to Constellation.

Constellation is a knowledgeable and experienced retail and wholesale energy supplier. Constellation and its affiliates have been active in the Ohio retail and wholesale electric and natural gas markets for years, providing retail supply services to residential, commercial, industrial and governmental customers. Constellation actively participates in the competitive market in the Duke Energy Ohio, Inc. ("Duke") service territory. In addition, Constellation has served as a supplier for governmental aggregations, participated in numerous wholesale auctions in Ohio pursuant to which the standard service offer ("SSO") load is served, and Constellation is an SSO supplier in Duke's service territory.

Constellation satisfies all of the factors for intervention and the Commission should make Constellation a full party to this proceeding for several reasons. First, Constellation has a real, direct and substantial interest in the proceeding. Duke's tariff proposal would prevent a governmental aggregator from offering an opt-out aggregation program for at least 12 months, after an early return of customers to the Duke SSO. Duke's proposal was filed at the same time as other electric utilities proposed slightly different language in response to the Commission's directive in Case No 00-2317-EL-GAG. *In the Matter of the Certification of Northeast Ohio Public Energy Council as a Governmental Aggregator*, Case No. 00-2317-EL-GAG, Entry at ¶ 14 (September 7, 2022). All proposals are being considered by the Commission simultaneously. This proposal could impact Constellation's current and future business interests as a supplier offering retail services to directly to Ohio customers, as a supplier for governmental aggregators, and as a SSO supplier. In addition, Constellation seeks to ensure that proposed changes do not harm its interests or the competitive market in Duke's service territory, and will comply with Ohio law.

Second, Constellation's motion is timely and, therefore, its participation will not unduly prolong or delay the proceeding. Third, Constellation's interest is not adequately represented by any of the existing parties. Fourth, as an active retail supplier, a supplier for governmental aggregators, and an SSO supplier, Constellation has a unique perspective. Thus, Constellation will contribute significantly to the development of the record, and the equitable resolution of the issues.

Constellation satisfies the requirements for intervention in this proceeding. Constellation requests that the Commission grant this motion to intervene under R.C. 4903.221 and Rule 4901-1-11 and make Constellation a full party of record.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 6th day of January 2023 upon the persons listed below.

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Summary: Motion Motion to Intervene electronically filed by Mr. Michael J. Settineri on behalf of Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.