**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market. | ))) | Case No. 12-3151-EL-COI |

**DUKE ENERGY OHIO, INC.’S**

**MEMORANDUM CONTRA APPLICATION FOR REHEARING**

**OF DIRECT ENERGY SERVICES, LLC, DIRECT ENERGY BUSINESS, LLC**

**AND IGS ENERGY**

1. **Introduction**

Pursuant to R.C. 4903.10 and Rule 4901-1-35, Ohio Administrative Code, Duke Energy Ohio, Inc., (Duke Energy Ohio) hereby submits its Memorandum Contra Application for Rehearing submitted in the above-referenced proceeding by Direct Energy Services, LLC, Direct Energy Business, LLC, (together referred to as Direct Energy) and IGS Energy. In their respective applications for rehearing, each proposes that the Commission order certain actions with respect to the relationship between electric distribution utilities (EDUs) and competitive retail service providers (CRES) that are not well considered and not timely. For reasons discussed in greater detail below, these grounds for rehearing are without merit and Direct Energy and IGS’ applications for rehearing should be rejected.

1. **Argument**

 Direct Energy argues that the Public Utilities Commission of Ohio (Commission) Finding and Order (Order) in this proceeding is unreasonable because it does not state that EDUs must provide customer interval energy usage data (CEUD) to CRES after tariffs are filed, pursuant to the Order. Direct Energy further argues that the Order is unreasonable in that it does not place time parameters on when EDUs must file tariffs regarding CEUD. In so arguing, Direct Energy ignores the discussion provided in detail in the Commission’s Order, and the realities of what is presently possible or legally permissible.

The Commission recognized that it is presently reviewing rules regarding CEUD in Case No. 12-2050-EL-ORD, and that EDUs will not be able to prepare or even consider tariff language for terms, conditions and charges associated with providing CEUD to CRES until many issues are resolved in that pending proceeding or otherwise addressed. The Commission further points out that the Staff will continue its work in the market development working group (MDWG) and that MDWG Staff Reports will assist the Commission in continually review and adopt competitive retail enhancements to further the development of the market. Despite Direct Energy’s desire to force an order prior to the resolution of many very important issues. Direct Energy’s demands are not well considered and should be rejected.

IGS Energy, likewise, seeks access to data, at customer cost, without any basis upon which to establish that such data will be used for customer benefit. Also, IGS Energy, like Direct Energy, seems to disregard whether EDUs are even capable of providing any such data.

IGS Energy seeks an order that would delineate the specific requirements for data made available to CRES; an order that will not require CRES to pay for the data; an order requiring EDUs to implement meter data management systems; a procedural determination with respect to how EDU tariffs related to providing data will be approved, and finally, an order requiring EDUs to bill for services provided by CRES for every product offering a CRES can devise.

IGS Energy, similar to Direct Energy, seeks to impose its business plan upon the stakeholders in Ohio at any costs and with total disregard to what is possible or advisable. Much of what IGS Energy demands is not yet feasible or possible and certainly not developed in any record before the Commission. IGS Energy’s demands should be rejected.

 Based upon the above, Direct Energy and IGS Energy’s arguments are without merit and their respective applications for rehearing should be denied.

 Respectfully submitted,

DUKE ENERGY OHIO, INC.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Elizabeth H. Watts

Associate General Counsel

Rocco O. D’Ascenzo

Associate General Counsel

Duke Energy Business Services LLC

155 East Broad Street, 21st Floor

Columbus, Ohio 43215

Phone: 614-222-1330

Fax: 614-222-1337

Elizabeth.Watts@duke-energy.com

Rocco.DAscenzo@duke-energy.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 5th day of May, 2014, to the parties listed below.

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Elizabeth H. Watts

|  |  |
| --- | --- |
| Maureen R. GradyJoseph P. SerioEdmund BergerMichael J. SchulerAssistant Consumers’ CounselOffice of the Ohio Consumers’ Counsel10 West Broad Street, Suite 1800Columbus, Ohio 43215-3485grady@occ.state.oh.us serio@occ.state.oh.usberger@occ.state.oh.usschuler@occ.state.oh.usAttorneys for Ohio Consumers’ Counsel | M. Howard PetricoffStephen M. Howard Vorys, Sater, Seymour and Pease LLP52 E. Gay StreetColumbus, OH 43215mhpetricoff@vorys.com smhoward@vorys.com Attorneys for Exelon Generation Company, LLC, andConstellation NewEnergy, Inc. |
| Christopher J. AllweinWilliams, Allwein & Moser LLC1500 West Third Avenue, Suite 330Columbus, Ohio 43212callwein@wamenergylaw.comAttorney for The Sierra Club | David F. BoehmMichael L. KurtzJody Kyler CohnBoehm, Kurtz & Lowry36 E. Seventh Street, Suite 1510Cincinnati, Ohio 45202dboehm@bkllawfirm.commkurtz@bkllawfirm.comjkylercohn@bkllawfirm.comAttorneys for Ohio Energy Group |
| Colleen L. MooneyOhio Partners for Affordable Energy231 West Lima StreetFindlay, OH 45839-1793cmooney@ohiopartners.org Attorneys for Ohio Partners for Affordable Energy | Steven T. NourseMatthew J. SatterwhiteYazen AlamiAmerican Electric Power ServiceCorporation1 Riverside Plaza 29th FloorColumbus, Ohio 43215stnourse@aep.com mjsatterwhite@aep.com yalami@aep.com Attorneys for Ohio Power Company |
| Trent A. DoughertyOhio Environmental Council1207 Grandview Avenue, Suite 201Columbus, Ohio 43212trent@theoeg.orgAttorney for Ohio Environmental Council  | Todd M. WilliamsWilliams Allwein & Moser, LLCTwo Maritime Plaza, 3rd FloorToledo, Ohio 43604toddm@wamenergylaw.comAttorney for Advanced Energy Economy Ohio |
| Thomas R. Hays7107 Cannons Park RoadToledo, Ohio 43617trhayslaw@gmail.comAttorney for Northwest Ohio Aggregation Coalition | Glenn S. KrassenMatthew W. WarnockJ. Thomas SiwoBricker & Eckler LLP100 South Third StreetColumbus, Ohio 43215gkrassen@bricker.commwarnock@bricker.comtsiwo@bricker.com Attorney for Northeast Ohio Public Energy Council |
| Judi SobeckiJoseph StrinesThe Dayton Power and Light Company1065 Woodman DriveDayton, Ohio 45432judi.sobecki@aes.comAttorneys for The Dayton Power and Light Company | M. Howard Petricoff Stephen M. Howard Vorys, Sater, Seymour and Pease LLP52 East Gay StreetColumbus, Ohio 43216-1008mhpetricoff@vorys.com smhoward@vorys.com Attorneys for NRG Energy, Inc. |
| Matthew WhiteVincent ParisiIGS Energy6100 Emerald ParkwayDublin, Ohio 43016mswhite@igsenergy.comvparisi@igsenergy.comAttorney for IGS Energy | Gregory PoulosEnerNOC, Inc.471 East Broad Street, Suite 1520New Albany, Ohio 43215gpoulos@enernoc.comAttorney for EnerNOC, Inc. |
| M. Howard Petricoff Stephen M. Howard Vorys, Sater, Seymour and Pease LLP52 East Gay StreetColumbus, Ohio 43216-1008mhpetricoff@vorys.com smhoward@vorys.Com Attorneys for the Retail Energy Supply Association | Joseph Patrick MeissnerLaw Firm of Meissner and Associates5400 Detroit AvenueCleveland, Ohio 44102meissnerjoseph@yahoo.com Attorney for The Citizens Coalition |
| Michael R. SmalzJoseph V. MaskovyakOhio Poverty Law Center555 Buttles AvenueColumbus, Ohio 43215-1137msmalz@ohiopovertylaw.org jmaskovyak@ohiopovertylaw.org Attorneys for Ohio Poverty Law Center | Ellis JacobsAdvocates for Basic Legal Equality, Inc.130 West Second Street, Suite 700 EastDayton, Ohio 45402ejacobs@ablelaw.org Attorney for the Edgemont NeighborhoodCoalition |
| Nicholas A. McDanielEnvironmental Law and Policy Center1207 Grandview Avenue, Suite 201Columbus, Ohio 43212NMcDaniel@elpc.orgAttorney for ELPC | Michael A. WaltersPro Seniors, Inc.7162 Reading RoadSuite 1150Cincinnati, OH 45237mwalters@proseniors.org |
| Noel MorganLegal Aid of Southwest Ohio, LLC215 East Ninth Street, Suite 500Cincinnati, Ohio 45202nmorgan@lascinti.org Attorney for Communities United for Action | Scott TorgusonLegal Aid Society of Columbus1108 City Park AvenueColumbus, Ohio 43206storguson@columbuslegalaid.org Attorney for Legal Aid Society of Columbus |
| William SundermeyerAssociate State Director, AdvocacyAARP Ohio17 S. High Street, #800Columbus, OH 43215wsundermeyer@aarp.org  | Craig G. Goodman, Esq. PresidentStacey RantalaDirector, Regulatory ServicesNational Energy Marketers Association3333 K Street, NW, Suite 110Washington, DC 20007cgoodman@energymarketers.com srantala@energymarketers.com  |
| Jay L. KooperHess CorporationOne Hess PlazaWoodbridge, NJ 07095jkooper@hess.comAttorney for Hess Corporation | Mark BrooksUtility Works Union of America521 Central AvenueNashville, TN 37211markbrooks@uwua.netAttorney for UWUA |
| Samuel C. RandazzoFrank P. DarrMatthew R. PritchardMcNees Wallace & Nurick LLC21 E. State Street, 17th FloorColumbus, Ohio 43215Sam@mwncmh.comfdarr@mwncmh.commpritchard@mwncmh.comAttorney for Industrial Energy Users of Ohio | James W. BurkCarrie M. DunnFirstEnergy Service Company76 S. Main StreetAkron, Ohio 44308burkj@firstenergycorp.comcdunn@firstenergycorp.comAttorney for FirstEnergy Service Company |
| Peggy LeeRobert JohnsSoutheastern Ohio Legal Services964 East State StreetAthens, OH 45701plee@oslsa.orgrjohns@oslsa.org | Gary BenjaminCommunity Legal Aid Services, Inc.50 South Main Street, Suite 800Akron, OH 43308gbenjamin@communitylegalaid.org |
| Julie RobieAnne ReeseThe Legal Aid Society of Cleveland1223 West Sixth StreetCleveland, OH 44113Julie.robie@lasclev.orgAnne.reese@lasclev.org | Amy B. SpillerJeanne W. KingeryDuke Energy Business Services LLC139 East Fourth StreetCincinnati, OH 45202Amy.Spiller@duke-energy.comJeanne.Kingery@duke-energy.comAttorneys for Duke Energy Retail Sales, LLC  |
| Mark A. HaydenScott J. CastoFirstEnergy Service Company76 South Main StreetAkron, OH 44308haydenm@firstenergycorp.comscasto@firstenergycorp.com Attorneys for FirstEnergy Solutions Corp. | Michael K. LavangaBrickfield Burchette Ritts & Stone, PC1025 Thomas Jefferson Street, NWEighth Floor, West TowerWashington D.C. 20007mkl@bbrslaw.comAttorney for Nucor Steel Marian, Inc. |
| Gary A. JeffriesAssistant General CounselDominion Resources Services, Inc.501 Martindale StreetSuite 400Pittsburgh, PA 15212Gary.a.jeffries@dom.com | Kimberly W. BojkoMallory M. MohlerCarpenter, Lipps, & Leland, LLP280 North High St., Suite 1300Columbus, OH 43215Bojko@carpenterlipps.comMohler@carpenterlipps.comAttorneys for OMA Energy Group |
| Gretchen L. PetrucciVorys, Sater, Seymour and Pease LLP52 E. Gay StreetColumbus, OH 43215glpetrucci@vorys.comAttorney for Direct Energy Services LLC and Direct Energy Business LLC | Barth E. RoyerBell & Royer Co., LPA33 South Grant AvenueColumbus, Ohio 43215barthroyer@aol.comAttorney for Dominion Retail, Inc. |