

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Applications of Duke	)	
Energy Ohio, Inc. for an Increase in its Gas	)	Case No. 07-589-GA-AIR
Rates.	)	
	)	

In the Matter of the Application of Duke	)	
Energy Ohio, Inc. for Approval of an	)	Case No. 07-590-GA-ALT
Alternative Rate Plan for its Gas Distribution	)	
Service.	)	

In the Matter of the Application of Duke	)	
Energy Ohio, Inc. for Approval to Change	)	Case No. 07-591-AAM
Accounting Methods.	)	

**MEMORANDUM CONTRA OF  
INTEGRYS ENERGY SERVICES, INC.  
AND DIRECT ENERGY SERVICES LLC**

Pursuant to Section 4909.19, Revised Code, Rules 4901-01-12 and 4901-01-28 of the Ohio Administrative Code, and the December 21, 2007 Entry, now come Integrys Energy Services, Inc. ("Integrys") and Direct Energy Services LLC ("Direct Energy" and collectively "the Marketers") and submit their Memorandum Contra to the January 29, 2008 Motion to Strike Certain Objections filed by the Office of the Ohio Consumers' Counsel ("OCC") in the above captioned proceeding.

**I. Introduction**

On January 29, 2008, OCC filed a Motion to Strike Certain Objections to the Staff Report issued in Case No. 07-589-GA-AIR including those of the Marketers for the following reason:

IGS', Integrys/Direct's, and OEG's Objections identified above in the OCC's Motion to Strike address the Staff's recommendation

that no allowance should be made for working capital in rate base because Duke did not file a lead/lag study. These Objections ignore the fact that Duke did not conduct a new lead/lag study in the current case; therefore, the Staff's recommendation of a working capital allowance of zero in this case is consistent with Duke's most recent electric rate case.<sup>13</sup> Therefore, the Staff's recommendation that the Company not recover carrying costs on gas in storage is appropriate.

These objections, IGS, Integrys/Direct, and OEG have made to the Staff Report proposed recovery for carrying costs associated with gas in storage, through Duke's gas cost recovery rate ("GCR"). It is inappropriate for IGS, Integrys/Direct, and OEG to suggest that certain costs that have traditionally been recovered through base rates should suddenly be recovered through the GCR..

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<sup>13</sup> In *the Matter of the Application of the Cincinnati Gas and Electric Company for an Increase in Electric Distribution Rates*, Case No. 05-59-EL-AIR, et al. Staff Report at 5-6 (September 9, 2005) ("the Applicant indicated that it did not prepare a lead/lag study for this case. The Staff, therefore, recommends a working capital allowance of zero on Schedule B-5").

## **II. Argument**

The Commission should deny the OCC motion to strike because it has not stated a proper basis under Rule 4901-1-28(B) of the Ohio Administrative Code to eliminate the Marketers issue. The two criteria contained in Rule 4901-1-28(B) which would permit an Objection to be stricken from a rate case are: 1) The filed Objection(s) failed to address a finding, conclusion or recommendation contained or wrongly omitted from the Staff Report; or 2) the Objection was a general comment and lacked specificity. The motion to strike filed by the OCC did not specify which of the two criteria the Marketers working capital Objection failed to meet, but rather opposed the Marketers position on substantive and legal grounds.

Since the Marketers' working capital objection cited the exact pages of the Staff Report [page 6-7 and 91] with which the Marketers took issue, one cannot argue that Marketers' Objection is merely a general statement or lacked the specificity necessary for an active party to

understand and respond to the claim. Clearly, the Marketers Objection has sufficient specificity for a party to respond to the claim, because OCC has responded to the objection based on its substance. OCC argues that it “is inappropriate for IGS, Integrys/Direct, and OEG to suggest that certain costs that have traditionally been recovered through base rates should suddenly be recovered through the GCR.” *See id.*

This leaves the issue of whether the Marketers’ Objection to the Staff Report analysis of working capital is within the scope of the case. Working capital is a rate base asset item required by the Commission’s Standard Filing Requirements to be expressed on Schedule B-5 and by rule must be considered in determining a natural gas company’s rate base. Thus, the merits of whether and how the cost to finance storage gas and whether the funds advanced to accomplish that financing should be considered working capital are not only tangentially connected with the Application, they are part of the application requirements. It should also be noted that Duke disputes the position that the Staff Report takes as to whether inclusion of financing cost of storage gas should be in the rate base. So the working capital issue is one that will be actively pursued even if the OCC’s motion to strike was granted.

In sum, the OCC’s motion to strike quoted above reveals that the OCC’s true concern goes to the merits of the position that the Marketers are taking as to the treatment of storage gas expenditures for inclusion in working capital not a failure to specify an issue that is within the scope of the proceeding. The OCC is certainly free to object to the logic, legality or prior precedent which supports the positions which the Marketers are taking. However, the OCC cannot prevent the Marketers from placing evidence into the record and fully developing their legal position by brief now just by claiming now that prior precedent should prevent the Commission from accepting the Marketer’s position.

### **III. Conclusion**

The Commission must deny OCC's Motion to Strike the Objections of Integrys Energy Services, Inc. and Direct Energy Services LLC.

Respectfully submitted,

/s/

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M. Howard Petricoff  
Stephen M. Howard  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Tel: (614) 464-5414  
Fax: (614) 719-4904  
E-mail: mhpeticoff@vorys.com

Bobby Singh (0072743)  
Senior Attorney  
Integrys Energy Services, Inc.  
300 Wert Wilson Bridge Road, Ste 350  
Worthington, Ohio 43085  
Tel: (614) 844-4340  
Fax: (614) 844-8305  
E-mail: bsingh@integrysenergy.com

Attorneys for Integrys Energy Services, Inc. and  
Direct Energy Services LLC

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served upon the following persons, by first-class, U.S. mail, postage prepaid, and, where applicable, by e-mail, this 4<sup>th</sup> day of February, 2008.

Gretchen Hummel  
McNees Wallace & Nurick  
Fifth Third Center  
21 East State St., 17<sup>th</sup> Floor  
Columbus, OH 43215  
ghummel@mwnchm.com

David Boehm  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
dboehm@bkllawfirm.com

Thomas Lindgren / William Wright  
Assistant Attorneys General  
180 East Broad Street, Ninth Floor  
Columbus, OH 43215-3793  
thomas.lindgren@puc.state.oh.us  
william.wright@puc.state.oh.us

John Finnigan, Jr.  
Associate General Counsel  
Duke Energy Ohio  
2500 AT II, 139 E. Fourth Street  
Cincinnati, OH 45201  
john.finnigan@duke-energy.com

Michael Kurtz  
Boehm, Kurtz & Lowry  
36 E. Seventh Street, Suite 1510  
Cincinnati, OH 45202  
kurtz@bkllawfirm.com

Mary W. Christensen  
Christensen & Christensen  
100 E. Campus View Blvd., #360  
Columbus, OH 43235-4647

Larry Sauer/Joseph Serio/Michael Idzkowski  
Ohio Consumers' Counsel  
10 West Broad Street, 18<sup>th</sup> Floor  
Columbus, OH 43215-3485  
[sauer@occ.state.oh.us](mailto:sauer@occ.state.oh.us) / [serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)  
idzkowski@occ.state.oh.us

David C. Rinebolt / Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street / P.O. Box 1793  
Findlay, OH 45839-1793  
[drinebolt@aol.com](mailto:drinebolt@aol.com) / [cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

John W. Bentine  
Chester Willcox & Saxbe LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215-4213  
jbentine@cwsllaw.com

Paul Colbert  
Duke Energy Ohio  
155 East Broad Street, Suite 21  
Columbus, OH 43215  
pcolbert@cinergy.com

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus, OH 43215-4291  
tobrien@bricker.com

/s/

M. Howard Petricoff

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Summary: Memorandum Memorandum Contra of Integrys Energy Services, Inc. and Direct Energy Services LLC electronically filed by Howard Petricoff on behalf of Integrys Energy Services, LLC and Direct Energy