

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Motion to Modify	)	
the June 18, 2008 Opinion and Order in	)	Case No. 12-1842-GA-EXM
Case No. 07-1224-GA-EXM	)	

**REPLY OF DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS,  
LLC TO OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
MEMORANDUM CONTRA MOTION TO INTERVENE OF  
DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC**

Pursuant to Rule 4901-1-12(B)(2) of the Ohio Administrative Code, Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”) hereby files its Reply to Ohio Partners for Affordable Energy’s (“OPAE”) Memorandum Contra Direct Energy’s Motion to Intervene in this proceeding.

**A. Introduction**

On June 15, 2012, East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”) and the Ohio Gas Marketers Group (“OGMG”) jointly filed a Motion to Modify a previous order of the Public Utilities Commission of Ohio (“Commission”) to permit an exit of the merchant function of non-commercial customers of DEO. On July 27, 2012, the Commission set a procedural schedule, including among other things, an August 30, 2012 deadline for filing Motions to Intervene. Direct Energy, the Retail Energy Supply Association (“RESA”), and the Ohio Consumers’ Counsel (“OCC”) timely filed Motions to Intervene on August 30, 2012. On September 13, 2012, OPAE filed a Memorandum Contra the Motions to Intervene of Direct Energy, RESA, and OCC. Direct Energy hereby timely files its Reply to OPAE’s Memorandum Contra.

**B. Direct Energy's Motion to Intervene should be granted.**

Direct Energy's Motion to Intervene demonstrated it met the criteria to intervene in this proceeding. Direct Energy hereby incorporates by reference its August 30, 2012 Motion to Intervene into this Memorandum Contra. Direct Energy is a party familiar to this Commission whose interests are well known and who has continually been granted intervention to participate in Commission proceedings. Direct Energy's real and substantial interest in this proceeding is evident, unchallenged, and its Motion to Intervene should be granted.

OPAE's Memorandum contra challenges Direct Energy's intervention only on the grounds that Direct Energy's interests are already represented by the OGMG and RESA.<sup>1</sup> Direct Energy acknowledges it is a member of both OGMG and RESA. However, as the Motion to Intervene of RESA notes, "The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA."<sup>2</sup> And, as the Joint Motion explains, "[The positions taken by OGMG are consensus positions of the group and do not necessarily reflect the positions or beliefs of any individual member.]"<sup>3</sup> As a matter of course, these same or similar caveats appear in all other RESA and OGMG filings. The positions taken by OGMG and RESA throughout this case may not always represent the views of Direct Energy and therefore no other party can always adequately represent Direct Energy's interests in this case.

Further, intervention by individual members of associations or groups is common at the Commission. For example, Direct Energy intervened in the most recent rounds of electric security plan ("ESP") / market rate offer ("MRO") cases without opposition even though it also

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<sup>1</sup> OPAE Memorandum Contra at 2-3.

<sup>2</sup> RESA Motion to Intervene at 1, FN 1.

<sup>3</sup> Joint Motion at 1, FN 1.

participated as a member of RESA. OPAE did not object to Direct Energy's intervention in any of those ESP cases even though OPAE participated in those same cases.<sup>4</sup>

Additionally, the Commission's precedent notes it is the Commission's policy "to encourage the broadest possible participation in its proceedings."<sup>5</sup> And, our Ohio Supreme Court, when reviewing a Commission decision to deny an OCC Motion to Intervene, noted that "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO. The Consumers' Counsel explained her interest in the cases in her motions to intervene and also explained that her views would not be adequately represented by the existing parties. In the absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should have been granted."<sup>6</sup> Granting Direct Energy's Motion to Intervene would be consistent with the precedent of both the Commission and the Ohio Supreme Court.

Finally, OPAE states that all of the Motions to Intervene (Direct, RESA, and OCC) should be denied because the Joint Motion should be dismissed. At every turn possible OPAE has made the claim that the case should be dismissed. DEO and OGMG thoroughly debunked OPAE's claims at each of these turns and OPAE raised nothing new for the Commission's consideration. OPAE's baseless attempts to dismiss this case should be denied.

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<sup>4</sup> See American Electric Power-Ohio ("AEP") ESP proceeding (PUCO Case Nos. 11-346-EL-SSO, *et al.*), FirstEnergy ESP proceeding (PUCO Case No. 12-1230-EL-SSO), Dayton Power and Light MRO proceeding (PUCO Case Nos. 12-426-EL-SSO, *et al.*), and Duke Energy Ohio ESP proceeding (PUCO Case Nos. 11-3549-EL-SSO, *et al.*).

<sup>5</sup> See, e.g., *Cleveland Elec. Illum. Co.*, PUCO Case No. 85-675-EL-AIR, Entry at 2 (January 14, 1986).

<sup>6</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853 at ¶20.

### **C. Conclusion**

Direct Energy respectfully requests that the Commission grant its Motion to Intervene and that it be made a full party of record. Direct Energy also requests the Commission deny OPAE's request to dismiss this proceeding.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Reply was served this 18th day of September, 2012 by U.S Mail, personal, or electronic mail delivery upon the persons listed below.

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