

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Review of Chapter 4901:1-10, Ohio)	Case No. 12-2050-EL-ORD
Administrative Code, Regarding)	
Electric Companies		

**REPLY COMMENTS OF DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS, LLC**

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I. INTRODUCTION

On January 7, 2013, Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”) filed initial comments in this docket. Direct Energy timely submitted its Initial Comments in this proceeding and now respectfully submits its Reply Comments in this docket. Direct Energy’s decision not to address every aspect of each of the Initial Comments filed in this docket should not be construed as Direct Energy’s agreement or disagreement with such comments.

II. INITIAL COMMENTS

Rule 4901:1-10-05 – Metering

The Ohio Consumers’ Counsel (“OCC”) suggests that paragraph (F) of this rule be modified to provide customers the option to choose whether to receive a bill credit or a check for a refund when they have been overpaid. OCC Initial Comments at 5. Currently the EDU possesses the discretion to determine whether a refund will be provided *via* bill credit or check. OCC notes that overpayments occur as a result of faulty meters, misread meters, or following periods of inaccurate estimated meter reads.

Direct Energy recommends the Commission reject OCC's proposed change. For customers who are served by CRES providers the refund is provided in the same manner as the EDU chooses. Creating this optionality for customers would possibly require a CRES provider to manage a system for creating and cutting checks. Bill credits are almost always preferable from a CRES provider's perspective and the added burden on EDUs and CRES providers as well as the costs to create this optionality (that will ultimately be passed onto customers) outweighs the potential benefits for customers.

Rule 4901:1-10-24 – Customer Safeguards and Information

OCC also suggests that customer energy usage data should not be disclosed to governmental aggregators and CRES providers until a "privacy assessment" is conducted by the aggregator or CRES provider concerning the potential impact that the disclosure could have on customers. OCC Initial Comments at 28-29. OCC also suggests the proposed rule be modified to prohibit disclosure of energy usage data without the EDU conducting a privacy impact assessment and identifying risks associated with improper disclosure of the data. The Commission should reject OCC's suggestion. OCC has not demonstrated that its concerns about sharing customer data would outweigh the costs of such "privacy assessments" or identification of risks, which will ultimately be passed onto customers.

Rule 4901:1-10-28 – Net Metering

Rule 4901:1-10-28(B)(10)

Newly proposed Rule 4901:1-10-28(B)(10) states as follows: "The electric utility shall issue a refund to the customer-generator for the amount of the credit remaining in the net excess generation account at the end of the twelve month period of June 1 to May 31, regardless of whether the customer-generator is receiving generation from the electric utility or a competitive

retail electric service provider. This refund shall be equivalent to an annual true-up of net excess generation and should be calculated at the rate the customer-generator pays for generation. The refund should be issued to customer-generators by July 1 of each year.” Direct Energy addresses several of the initial comments made regarding this rule.

In its Initial Comments, Direct Energy suggested the Commission reject the rule as beyond its statutory authority. Direct Energy also proposed rejection of the rule inasmuch as it is so prescriptive it pigeonholes customers and CRES providers into narrow contract terms and precludes the ability of customers and CRES providers to enter into creative contract terms related to net metering. While Direct Energy maintains the Commission should adopt its Initial Comments and reject the proposed rule, Direct Energy also provides its reply comments to this subsection below in the event that the Commission does not adopt its position.

Ohio Manufacturers’ Association Energy Group (“OMAEG”) Initial Comments

OMAEG suggests that manufacturers should have the option to receive a payment for net-generation during the month it occurs, rather than earning a credit to be applied to the following month, with an annual true-up. OMAEG Initial Comments at 2. OMAEG says this monthly payment option would improve cash flow, which will be beneficial to some manufacturers.

Direct Energy would not oppose OMAEG’s suggestion if the Commission adopts a rule declining to proscribe a price paid to customers for their net generation. However, if the Commission proscribes a price paid to customers for their net generation, then Direct Energy recommends the Commission reject OMAEG’s request. Accepting OMAEG’s request would entail constant movement of creating refunds, then expecting payment back when the bank is

gone. This back and forth would be difficult to track and reconcile. A net metering installation is not meant to be a vehicle for cash flow management or a revenue stream.

FirstEnergy Companies Initial Comments

The FirstEnergy Companies observe that Staff's proposed rule does not accommodate customer-generators whose competitive retail electric service ("CRES") provider directly bills the customer for generation costs. FirstEnergy Initial Comments at 20-21. The FirstEnergy companies also foresee a potential to "game" the system if a unit cost provided to the utility for billing and/or refund purposes does not represent the full agreement between a CRES provider and the customer-generator; for example, if a higher unit cost of generation is accompanied by payment from the customer-generator to the CRES provider when excess generation occurs. FirstEnergy Initial Comments at 20-21. Thus, the FirstEnergy Companies propose that any refund be calculated at the electric utility's Standard Service Offer cost of generation. FirstEnergy Initial Comments at 20-21.

Direct Energy requests the Commission reject the FirstEnergy Companies' suggestion. If the price agreed to between a CRES provider and a customer is lower than the SSO price, then the customer would be receiving a windfall, presumably at the expense of the CRES provider or the SSO provider. This situation would potentially punish a CRES provider for being competitive in the market.

OCC Initial Comments

The OCC recommends this rule be modified to more explicitly state what a customer-generator will be refunded. OCC Initial Comments at 36-37. As it relates to CRES providers, OCC recommends the rule state "For service taken from a CRES provider, the full generation rate will be credited." As noted before, Direct Energy generally opposes any rule requiring a

specific refund rate; such decision should be left up to the customer and the CRES provider. Additionally, Direct Energy opposes OCC's change to the extent that a refund would go beyond just basic generation service. It is not clear whether OCC's suggested refund amount would include non-bypassable riders and other items beyond the generation rate agreed to by the CRES provider and the customer.

Additional Comments

Ohio Power Company also suggests that the Commission ensure CRES suppliers do not use customer information for purposes other than sale of electricity and should only provide monthly aggregate data. Ohio Power Initial Comments at 21-22. As an initial matter, Direct Energy supports ensuring that CRES providers do not use customer data for purposes other than for billing, collections, and energy management purposes. Direct Energy cautions that the Commission should not adopt regulations that supersede currently signed letters of authorization ("LOA") between CRES providers and customers. CRES providers and their customers mutually entered into those LOAs for specific purposes and those agreements should not be disturbed by any rules the Commission adopts. Additionally, the Commission must be mindful not to restrict the use of that data so as to negate or severely inhibit the ability of CRES providers to cross-sell other energy usage and management products to their customers or the ability for third party energy efficiency providers to access and utilize this information. *See also* OPower Initial Comments at 2-4. Section 4928.02(D), Revised Code, directs the Commission to "Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure." Overly restrictive rules related to customer information will frustrate

Ohio's energy policy in Section 4928.02, Revised Code, by inhibiting the introduction of innovative products in the Ohio marketplace to benefit Ohio consumers. Direct Energy encourages the Commission to strike the proper balance to protect customers' data while also harnessing the power of that data for customers' benefit while accomplishing Ohio's energy goals.

III. CONCLUSION

Direct Energy requests the Commission accept its proposed changes to the proposed rules contained in the proposed rules in the Commission's November 7, 2012 Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify this 6th day of February, 2013, that a copy of the foregoing document was served
via electronic mail to the e-mail addresses below.

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Summary: Reply Comments electronically filed by JOSEPH CLARK on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC