

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)	
of its Rules for Competitive Retail Electric)	Case No. 12-1924-EL-ORD
Service Contained in Chapters 4901:1-21)	
And 4901:1-24 of the Ohio Administrative)	
Code.)	

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

February 6, 2013

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I. INTRODUCTION

Pursuant to the Commission’s November 7, 2012 Entry in this matter, Direct Energy Services, LLC and Direct Energy Business, LCC (jointly, “Direct Energy”) respectfully submit these Reply Comments to some of the Initial Comments on the proposed amended rules in Ohio Administrative Code Chapters 4901:1-21 and 4901:1-24. Direct Energy reviewed all of the documents filed in this docket and has identified the following issues which merit reply comments. The fact that Direct Energy elected not to address a particular comment or topic raised by a party in the initial comments does not necessarily signify agreement, only that Direct Energy’s Initial Comments did not need to be reiterated.

II. REPLY COMMENTS TO PROPOSED RULES

A. Rule 4901:1-21-03 – “General Provisions.”

In response to proposed Rule 4901-1-21-03(D) Eagle Energy recommends the Commission adopt a provision to require a CRES provider to notify customers when a product price is higher than the EDU’s Price To Compare (“PTC”). (Eagle Energy Initial Comments, p. 6). Direct Energy opposes Eagle’s suggestion for two reasons. First, EDU prices to compare are

not currently publicly posted on the PUCO's website; they are only available on the customer's bill and only for residential customers. Thus, a CRES provider's calculation of a utility and customer-specific PTC is a function of reviewing the tariff and calculating the appropriate rate based on a particular customer's usage and demand. Therefore, this rule would require wide dissemination of information that a CRES provider calculated and might essentially do the tariff analysis work for a competitor. A PTC for an individual customer is based upon an analyst's interpretation of the tariff - not a set calculation. For example, certain products which are designed to reduce peak demand could have varying prices to compare at different demand levels.

Second, Eagle Energy does not explain any benefit that might be derived from this requirement. Arguably, the PTC might be less than a fixed price product offered by a CRES provider but this difference in price is due to the price certainty and protection from price volatility that a fixed price product provides. Further, as the market develops it is likely that CRES providers will develop innovative products that are not based solely on a per kilowatt hour price, such as Direct Energy's "Free Power Day," which provides customers with free electricity for a single day of their choice during the week. Requiring CRES providers to "notify" customers when a product price is higher than the PTC is both impractical and does not provide any benefit when the PTC is an apples to oranges comparison to potential products in the market.

Lastly, the PTC may not actually be the only option in the market, there may in fact be lower or better offers for a customer offered by other CRES providers at that time. If the product is not based off of the PTC, requiring that as the only point of reference does not offer a true view of competitive offerings given there may actually be lower or better offers from competitors. Direct Energy suggests the Commission reject Eagle's proposed change and focus

on designing a comprehensive website that allows customers to easily compare products rather than focusing customers on a single comparison point, such as the PTC.

In response to proposed Section (D)(6) First Energy Solutions (“FES”) suggests that the rule specify “This section does not apply to renewal offers or offers that are not open to the general public.” (FES Initial Comments pp. 2). Direct Energy supports this clarification. Further, Direct Energy supports the recommendation that the Commission look to Illinois, Pennsylvania, and Maryland as an example of a “best practice” in allowing suppliers to post their own market offers to the Commission’s website. (FES Initial Comments, p. 3).

B. Rule 4901:1-21-05 “Marketing and solicitation.”

Eagle Energy suggests that door-to-door enrollment should be entirely prohibited, and specifically, that CRES providers should be prohibited from soliciting customers within communities that have implemented a government aggregation program. (Eagle Energy Initial Comments, pp. 3 and 6). The Commission should reject this proposed rule because the General Assembly has not banned door-to-door sales and has not empowered the Commission to do so. Eagle Energy fails to assert what authority the Commission has to eliminate door-to-door sales as a legal marketing channel. Further, even in communities where ordinances have been passed to ban door-to-door sales, courts have limited such restrictions in defense of the right to commercial speech.¹

Eagle Energy further states that a CRES provider should be prohibited from soliciting within any community that has a governmental aggregation program in place. (Eagle Energy

¹ The name Green River Ordinance is given to a common United States city ordinance prohibiting door-to-door solicitation. Under such an ordinance, it is illegal for any business to sell their items door-to-door without express permission from the household beforehand. Some versions prohibit all organizations, including non-profit charitable, political, and religious groups, from soliciting or canvassing any household that makes it clear, in writing, that it does not want such solicitations (generally with a "No Trespassing" or "No Solicitations" sign posted). The ordinance is named for the city of Green River, Wyoming, which in 1931 was the first city to enact it. The ordinance was unsuccessfully changed on constitutional grounds by the Fuller Brush Company in 1932.

Initial Comments, p. 6). Eagle Energy's assertion that additional marketing offers during the opt-out process are "frustrating" and "confusing" to customers has no merit. Residential customers are becoming increasingly savvy and being presented with multiple offers is a sign of true competition. (See Crain's article "Rivals undercutting city's electricity deal with Integrys."²). While Direct Energy recognizes that opt-out aggregation is a viable marketing channel it is no more than that – a mere option for customers to participate in Choice. Adopting Eagle Energy's proposal would equate to establishing aggregation as the sole channel for retail competition and the Commission should reject it.

In response to proposed Rule 4901:1-21-05(C)(8)(g) on the use of affiliate names, Eagle Energy suggests that the Commission should either prohibit affiliates from adopting a similar name as the EDU or that the same criteria should be adopted as in Docket No. 09-257-GA-CSS. (Eagle Energy Initial Comments, p. 7). Direct Energy believes that as a threshold matter the Commission must determine whether use of a similar name is misleading to customers. If the Commission determines that use of a similar name is misleading because it makes customers think the CRES provider is the utility or has a special relationship with the utility then no entity, including an affiliate, should use the name. However, if the Commission determines that use of a similar name is not misleading to customers then any single entity with licensing rights should be free to use the similar name. If the Commission continues to allow use of utility name through affiliation or licensure Direct Energy believes all entities must be held to the same standards.

Duke Energy Ohio suggests that suppliers should share plans for mass marketing with the utility so that the utility can appropriately staff its call center to respond to calls. (Duke Energy Ohio Initial Comments, p. 2). Direct Energy opposes this proposal because a CRES provider

² <http://www.chicagobusiness.com/article/20130110/NEWS01/130109762/rivals-undercutting-citys-electricity-deal-with-integrys>

should not be required to disclose its marketing plans or materials to EDUs. This is competitively sensitive data and Duke Energy Ohio offers no evidence to support that having access to this specific information would result in better response to customer inquiries or guarantees of confidentiality prior to the information becoming public.

In response to Staff's proposal that a CRES provider's promotional and advertising material targeted for residential and small commercial customers be provided to the commission within three business days of a request by the commission or its staff, OCC asserts that such material should also be provided to the OCC upon a request for the materials by the commission or upon a request by the OCC. Direct Energy strongly opposes this request. Unlike with competitively sensitive materials provided to the Commission, CRES providers have no standard, pre-defined legal mechanism to request confidential treatment of documents provided to the OCC. Therefore, granting OCC the right to request any promotional or marketing materials used by CRES could stifle innovation. Some products offered by CRES providers, such as affinity offers, are specifically marketed to a small segment of consumers and therefore it would put CRES at a competitive disadvantage to have to disclose marketing materials to the OCC upon its request. Therefore, the Commission should reject this proposed rule.

C. Rule 4901:1-21-06 "Customer enrollment."

In response to the proposed rules on customer enrollment, Duke Energy Retail ("DER") suggests that enrollment procedures should be standardized statewide and that EDUs should be required to allow enrollment on the basis of account numbers. While Direct Energy agrees that enrollment procedures should be standardized statewide, Direct Energy strongly encourages the Commission to permit customer enrollment by a unique customer identifier known to the customer, such as a social security number or driver's license registration number. Specifically,

Direct Energy suggests that a subsection should be added to this rule which states “Each electric utility shall provide in its tariff the ability for a CRES provider to enroll a customer by providing a secure pin known to the account holder, such as a social security number, driver’s license registration number, or other unique identifier, except in the case of door-to-door enrollment.” This proposed rule would promote nondiscriminatory access to competitive retail electric services by enabling a customer to enroll with a CRES provider without requiring the customer to have her utility bill in hand or have memorized his electric utility account number. In addition it would allow CRES providers to access channels which reach customers at places other than their home.

In response to proposed Rule 4901:1-21-06(D)(1)(e) FirstEnergy Solutions (Initial Comments pages 4-5) and Duke Energy Retail (Initial Comments pages 12-13) both suggest that a customer should not be required to contact their utility in order to rescind a contract. Direct Energy supports this proposal and advocates that the Commission permit customers to rescind a contract by contacting either the utility or their CRES provider. Rather than being required to contact the utility, customers should have the opportunity to ask questions or discuss their concerns directly with a CRES provider representative who can answer questions and provide appropriate information regarding the contract to the customer. In addition, it would increase the customer care experience to not be “punted” to the utility by a CRES provider in order to rescind. However, recognizing that a utility does act as a neutral party the rule should not require a customer to contact the CRES provider in order to rescind.

Eagle Energy also suggests a new rule be added that once a CRES begins an aggregation program all residents within the community should be permitted to take service under the terms of the aggregation, thereby cancelling any individual contracts residents may have entered into

with a CRES provider. (Eagle Energy Initial Comments, p. 7-8). Direct Energy strongly opposes this suggestion. Again, Eagle Energy is asking the Commission establish aggregation service as a superior channel of competition, at the expense of customers who have already entered into a bi-lateral contract with a CRES provider. Further, this proposition is in direct contravention of Ohio law. Ohio Revised Code 4928.20(H)(3) provides that a governmental aggregator shall not include in its aggregation a customer in contract with a certified electric services company. Therefore, the Commission should reject this proposed rule.

Eagle Energy also suggests that the Commission adopt a new rule that requires the EDU to permit enrollment as long as the CRES has provided a minimum of five business days' notice prior to the meter reading date. Direct Energy supports this proposal.

FES believes that the rescission period should be five business days. (FES Initial Comments, p. 9). Despite Direct Energy's support of the Commission's recommendation to change calendar days to business days throughout the proposed rules, this specific provision should be measured by calendar days in order to create clear and understandable timeframes for customers. Dominion Retail makes the point that if a customer is told she has seven days to act, the customer understands this deadline precisely, without having to perform a calculation to distinguish between business, weekends, and holidays. (Dominion Retail Initial Comments, p. 2). The Commission should retain the seven calendar day period for contract rescission.

OCC suggests that the rules should require CRES providers to review the audio tapes or other documentation of enrollments rejected through the third-party verification process. (OCC Initial Comments, p. 8). While Direct Energy supports that a CRES provider should review a sample percentage of such audio tapes, this rule should not be so prescriptive as to require a CRES provider review all such audio tapes because this would be a significant administrative

burden and provide minimal benefit. OCC also suggest that CRES provider employees and agents who fail to comply with the Ohio Administrative Code or who have a “valid complaint” made by a customer concerning deceptive marketing and solicitation practices should be banned from performing future direct solicitations. (OCC Initial Comments, pp. 8-9). Direct Energy supports the concept that CRES employees and agents must comply with all applicable laws and regulations. However, this proposal is flawed in several respects. First, the term “valid complaint” is not specifically defined but, at a minimum, should confirm that an agent actually committed a violation of the rules. Second, if the Commission feels the need to regulate the employment practices of CRES providers it should provide an option for re-training rather than termination, to provide flexibility for new employees who may have merely made a mistake in the script but are not bad actors. Finally, in an economy where Ohioans are struggling for jobs it seems imprudent to “ban” employees from performing a specific job function in the future. Direct Energy does not support blacklisting people from employment. While a CRES provider can terminate the employment of agents for misconduct it is aware of, we have no way of knowing if that agent will go to work for another supplier. To truly prevent a bad actor from moving from CRES provider to CRES provider the Commission could require a registration of all door to door agents. This would allow the Commission to revoke the registration of a persistent bad actor and inform CRES providers that an agent is no longer eligible to sell CRES due to registration revocation or suspension.

OCC further suggests that when a customer who has switched to a CRES provider is subsequently approved for the PIPP program CRES providers and EDUs (rather than the customer) should pay switching and any other fees incidentally associated. (OCC Initial Comments, p. 11). This proposal ignores the basic premise that cost allocation should follow

cost causation and creates an additional subsidy on the subsidy of the PIPP program itself and should be rejected by the Commission.

D. Rule 4901:1-21-08 “Customer access, slamming complaints, and complaint handling procedures.”

OCC suggests a new rule regarding slamming complaints that would require review of all enrollments performed by the employee who engaged in slamming, issuing a report to the Commission Staff and the OCC, and termination of the employee. (OCC Initial Comments, p. 14). Direct Energy opposes this proposal for the same reasons discussed above regarding submission of information to OCC, verification that a slam actually occurred, and termination of employees.

E. Rule 4901:1-21-09 “Environmental disclosure.”

Dominion Retail suggests that environmental disclosure items could be disclosed to customers by posting such data on the CRES provider’s website and that customers would be advised of this via bill inserts or separate mailings. (Dominion Retail Initial Comments, p. 4). Direct Energy believes that one purpose of providing information via the website is to reduce paper mailings and therefore Dominion Retail’s suggestion is counterproductive. Because Direct Energy advocates that environmental disclosures should be electronically filed, it should also be permissible to direct customers to a website where environmental disclosure data can be reviewed rather than wait for a customer to request electronic disclosure the rule should be reversed to allow for electronic disclosure unless the customer requests otherwise. Therefore, Direct Energy suggests the rule be simplified to provide that both annual and quarterly environmental disclosure can be accomplished electronically and the Commission should reject Dominion Retail’s suggestion that paper postcards still be provided.

F. Rule 4901:1-21-10 – “Customer information.”

Eagle Energy suggests a new rule that prohibits a CRES supplier from requesting a customer’s social security number. (Eagle Energy Initial Comments, p. 8). Only one EDU currently provides a purchase of receivable option that does not require a CRES provider to conduct collection for uncollectible amounts. Social security numbers are a key component to any collection activity and without access to this information, the already onerous collection process becomes more difficult. In addition, CRES providers may choose to request social security numbers to verify customer identity given it is not something posted on a bill. CRES providers must keep this information confidential other than for collection and legal process under existing rules. Direct Energy opposes this suggestion because if a CRES provider is required to pursue collections it must have access to the customer’s social security number and a social security number provides another identifier to ensure the customer account holder has enrolled.

G. Rule 4901:1-21-11 – “Contract administration.”

OCC asserts that CRES providers should be required to use survey data or other statistically valid measures to verify that contracts being used for enrolling customers have adequate and understandable terms and conditions. (OCC Initial Comments, pp. 16-17). Direct Energy opposes this proposal as an extremely costly and unnecessary provision that contravenes the Common Sense Initiative.

H. Rule 4901:1-21-12 - “Contract disclosure.”

In response to proposed Rule 4901:1-21-12(D)(2), Duke Energy Retail suggests that a percent-off product include the amount of the discount and a description of the portion of the EDU’s rate to which the discount applies. (DER Initial Comments, p. 14). Direct Energy

encourages the Commission to not tie a percent-off product to an existing EDU rate as this could prevent certain products from being brought to market. For example, a CRES provider could develop a product that was based on a percent-off the lowest advertised price in the market or a percent-off the price paid by the customer in the previous year. Therefore, the Commission should reject this proposed change and ensure that the rule does not limit a percent-off discount to a particular rate.

In response to proposed Rule 4901:1-21-12(B)(14), Eagle states that automatic renewal provisions without a customer's written authorization should be prohibited. (Eagle Energy Initial Comments, p. 8). Direct Energy suggests that automatic renewal provisions should be clearly disclosed in the terms and conditions of an offer but that a customer need not provide written authorization for a renewal. A customer must affirmatively consent to the initial terms and conditions of an offer and CRES providers are already required to provide notice of an automatic renewal. In fact, under Direct Energy's proposed requirement that direct solicitations and door-to-door conduct a recorded third party verification auto-renewal provisions notice will be literally read to the customer and their response recorded. Therefore, it is unnecessary to require a customer to affirmatively consent for their contract to automatically renew again so long as the terms of the initial contract clearly disclosed the renewal provisions.

I. Rule 4901:1-21-16 – “Opt-out government aggregation.”

In response to proposed rule 4901:1-21-16 Eagle Energy suggests the Commission “take ownership” of opt-in programs. This suggestion contravenes the parameters of the Commission's authority. While the General Assembly has empowered the Commission to establish certain rules for aggregations, it should not supersede the home-rule or contracting

authority of a community. Direct Energy opposes Eagle's suggestion the Commission broaden this rule.

J. Rule 4901:1-21-18 – “Consolidated billing requirements.”

In response to proposed Rule 4901:1-21-18, FES suggests that an additional section be added which specifies that “CRES charges shall remain on a customer bill until fully paid.”

Direct Energy supports this proposal because it would benefit both customers and CRES providers by reducing the likelihood that a CRES provider would have to pursue a formal collection proceeding to recover payment owed but it does not go far enough. FES's proposal still leaves the CRES provider without knowledge of what a customer actually paid on the total bill and no ability to “audit” the EDU to ensure the payment priority is being followed. Without this it is possible a CRES provider could have long arrearages that are eventually written off because customer payments were applied to EDU arrearage rather than a CRES arrearage. Or that a CRES provider would return a customer to EDU service due to non-payment because an EDU mis-applied the payment priority. Thus, Direct Energy encourage the Commission to require EDUs to provide notice to CRES providers of the specific amount paid by customers each month, to ensure that CRES provider charges are being given the appropriate payment priority.

K. Rule 4901:1-24-05 “Application content.”

In response to this proposed rule, Dominion Retail asserts that there is no purpose in identifying the information that “can” be requested via the application form. (Dominion Retail Initial Comments, p. 9). Direct Energy disagrees to the extent that such additional information can provide some insight to applicants about the type of information that the Commission is interested in reviewing. Therefore, Direct Energy supports the rule as proposed by Staff.

OCC suggests that applicants should be required to disclose “statements” concerning “consumer interactions” in other jurisdictions. (OCC Initial Comments, p. 20). Direct Energy is concerned with the scope of information the terms “statements” and “consumer interactions” could capture. Direct Energy serves millions of customers across North America and requiring it to provide the Commission a record of “customer interactions” could include emails, Twitter messages, Facebook messages/comments, phone calls, and countless other “statements” that customers make in hundreds of forums. Direct Energy opposes this proposal as an unnecessary provision that would administratively burden CRES providers and the Commission.

III. REPLY COMMENTS TO ADDITIONAL ISSUES

In its general comments, Eagle Energy asserts that customers are “confused” by the competitive energy market due to “marketing gimmicks” such as rewards points, gift cards, and energy services products being included in the product offerings of CRES providers. While Eagle Energy has a clear preference for aggregation programs, Direct Energy believes that if a customer chooses a particular CRES provider because he or she sees value in a particular reward program that is the customer’s right. Just as a customer may choose to shop at a particular grocery store to receive fuel discounts, fly on a particular airline to receive airline miles, or stay at a particular hotel chain to receive “points” so too may a customer choose a particular energy supplier because the customer saw value in a particular program offered by a CRES provider. The need for CRES suppliers to differentiate themselves by offering customers value-added products like airline miles, gift cards, or energy services is an indication that Ohio’s energy market is fiercely competitive and can provide unique benefits to customers.

The Northeast Ohio Public Energy Council (“NOPEC”) proposes a new rule that asks the Commission to show a preference for aggregation as compared to other methods of participation

in the Choice market by prohibiting a CRES provider from soliciting customers prior to the customer having the opportunity to participate in an opt-out aggregation. (NOPEC Initial Comments, p. 4-5). First, a CRES provider has no way of knowing if a customer has been sent an opt-out notice. Second, the Commission should not be deciding for customers the order in which they may receive product offerings. Direct Energy opposes this proposal because it establishes aggregation as a “preferred” channel for customers to receive electric service and it should be rejected by the Commission.

NOPEC also suggests that a landlord could require a tenant to sign up for CRES service as a condition of approving the tenant’s credit or lease application. (NOPEC Initial Comments, p. 5). Although Direct Energy is not aware of this type of behavior in practice, it does agree with NOPEC that this should not be permitted. However, the Commission must be careful to not prohibit the ability of a CRES provider to negotiate with a landlord to be a preferred provider. As long as the agreement does not go so far as to require enrollment with a particular supplier as a condition of rental Direct Energy views this as another channel to market for suppliers just as cable and satellite companies work with landlords today.

OPAE did not make rule-specific proposed changes in its initial comments but instead submitted general or conceptual recommendations. First, OPAE suggests that the standard service offer should be available on an opt-in basis for residential and small commercial customers. (OPAE Initial Comments, p. 6). Direct Energy supports the proposition that the standard service offer should be provided on an opt-in basis, rather than as the service a customer automatically receives if the customer has not affirmatively chosen a CRES provider through a bi-lateral contract or aggregation program.

OPAE also asserts that CRES providers are in the business of making a sale to earn profit and are motivated to maximize that profit. (OPAE Initial Comments, p. 11). While it is true that CRES providers, like all other businesses other than non-profit entities, make sales to earn profit, this characteristic also means that CRES providers (unlike regulated utilities) are motivated to maximize the efficiency of employees, overhead costs, and other business operations. In a truly competitive market, CRES providers are engaged in head-to-head competition that requires efficient, high-quality service to customers. CRES providers who are able to effectively compete by engaging customers with energy products that meet customers' needs will succeed and advance the General Assembly's state policy of maximizing retail competition.

OPAE claims that "the typical customer's reliance on what is said in person far outweighs any written disclosures or written terms of service" and that "oral statements are...often contradicted by the large and small print of the actual agreement." (OPAE Initial Comments, pp. 13 and 36). First, OPAE offers no evidence in support of this claim. Second, Direct Energy believes that customers are fully capable of reading written materials and discerning whether written terms are consistent with verbal statements. Finally, the proposed third party verification rules which require an independent third-party not compensated for the sale to verify the customer's verbal agreement demonstrate that a customer fully understands the terms of the contract during enrollment.

OPAE asserts that the regulation and prohibition of certain contract terms is an essential tool for the regulation of a competitive market. (OPAE Initial Comments, p. 13). Direct Energy disagrees with OPAE's assertion and believes that prohibition of certain contract terms should be permitted only as an exception, rather than an essential tool. Further, Direct Energy would like to emphasize that in addition to Commission rules, CRES providers are subject to a number of

federal and Ohio consumer protection laws, including: the Consumer Sales Practices Act (1972); the Home Solicitation Sales Act (1973); the Telemarketing Act (2004); and the Telephone Solicitation Sales Act (1996).

With regard to the publication of complaint data, OPAE suggests that the Commission should allow for public comment on customers' experiences with individual suppliers to be published on the Commission's website, similar to the "Angie's List" service. (OPAE Initial Comments, p. 19). This proposal is flawed for several reasons. First, Angie's List is a privately hosted, members-only website that consumers must pay to access whereas the Commission's website is a publically assessable website hosted by the State of Ohio. Second, Angie's List does not permit anonymous reviews and it seems unlikely that the Commission would want to require customers to disclose personal identifying information on a public website in the process of submitting a complaint. Finally, Angie's List uses a certified data collection process to prevent companies and providers from reporting on themselves or their competitors which likely includes a verification process to ensure that customer reports are accurate. For example, Angie's List limits data collection to specific items including whether or not the customer actually took service to prevent customers from "reporting" on a company they did not interact with. Angie's List is also designed to mitigate a skewed result based on a customer's likelihood to only report bad experiences, and incents customers with a good experience to post reviews through email reminders and discounts. Is the Commission prepared to install this type of capability to ensure fair reviews?

Direct Energy suggests that the Commission look to Illinois (www.pluginillinois.com) and Texas (www.powertochoose.org) for best practices in complaint reporting. Most importantly, in publishing complaint data the Commission must clearly distinguish between an

inquiry or question from the customer and a true complaint about CRES supplier service. For example, if a customer enrolls with Direct Energy after a door-to-door solicitation then calls the Commission to cancel the contract with Direct Energy because her existing CRES supplier will impose a \$295 early termination fee, that call should not be defined as a “complaint” against Direct Energy. Instead, that customer call should be reported as an “inquiry” or not reported at all because it is not indicative of misconduct by a CRES provider.

OPAE suggests that the Commission should require suppliers to disclose their price in a “uniform manner” in marketing materials and terms of service documents and outlines a particular formula for such disclosures. (OPAE Initial Comments, pp. 31-33). Direct Energy opposes this proposal because it is incredibly short-sighted and based on the assumption that current energy rates are indicative of future energy products. It is possible that as the market develops, CRES suppliers would bring more innovative products to customers that are not tied to a specific per-kilowatt hour charge. However, a requirement that price be disclosed in a “uniform manner” that includes a per-kilowatt hour charge would effectively prohibit more innovating pricing. Therefore, the Commission should reject OPAE’s proposal.

OPAE also suggests that when a customer’s language skills are insufficient to allow the customer to understand and respond to information conveyed by an agent, the agent shall terminate contact with the customer. (OPAE Initial Comments, p. 42). Direct Energy suggests that if the CRES supplier agent provides printed materials in the customer’s preferred language to the customer, the sales agent should be permitted to use a recorded translation service to communicate the terms of the offer to the customer.

OPAE asserts that door-to-door sales should be restricted to different hours based on the time of year. (OPAE Initial Comments, p. 42). Direct Energy disagrees and believes that door-

to-door sales should be permitted between the hours of 9AM and 9PM, unless a local ordinance provides stricter limits, in which case the salesperson shall comply with the local ordinance.

Duke Energy Retail (“DER”) suggests that a Purchase of Receivables (“POR”) program is necessary to mitigate billing issues. (DER Initial Comments, pp. 4-5). Direct Energy supports the creation of a POR program by all EDUs but also encourages the Commission to permit Supplier Consolidated Billing with utility shut-off as an additional means for customers to receive a single bill. With regard to DER’s alternative proposals, Direct Energy does not agree that an EDU could not be authorized to negotiate payment plans for CRES balances but does support the other proposals outlined; that the EDU would not have the ability to return customers to default service and the CRES providers’ outstanding balances would be factored into disconnection decisions and a customer’s ability to switch in the future. (DER Initial Comments p. 5). Direct Energy suggests that the Commission permit EDUs and CRES providers to determine the EDU’s ability to negotiate payment plans for CRES balances on an individual CRES provider basis.

In response to the proposed third-party verification process, DER suggests that additional statements be added to the process, including a statement that: other CRES providers could also provide service and the customer could remain a customer of the EDU. (DER Initial Comments, p. 11). Direct Energy opposes this recommendation because the third-party verification process as proposed is already sufficient to put customers of notice of these facts and CRES providers are not in the business of marketing other providers’ services or EDU service.

IV. CONCLUSION

Direct Energy respectfully requests that the Commission accept the changes recommended in its January 7, 2013 Initial Comments and these Reply Comments in approving the final rules.

Respectfully submitted,

/s/ Jennifer L. Lause

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served via electronic mail on the parties listed below this 6th day of February, 2013.

/s/Jennifer L. Lause

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Summary: Reply Comments of Direct Energy Business, LLC and Direct Energy Services, LLC electronically filed by Ms. Jennifer L. Lause on behalf of Direct Energy Business, LLC and Direct Energy Services, LLC