

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., to Adjust its Alternative)	Case No. 12-802-EL-RDR
Energy Recovery Rider)	

**REPLY OF DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS,
LLC TO DUKE ENERGY OHIO’S MEMORANDUM CONTRA MOTION TO
INTERVENE OF DIRECT ENERGY SERVICES, LCC 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 Duke Energy Ohio’s Memorandum Contra Direct Energy’s Motion to Intervene in this proceeding.

A. Introduction

On February 29, 2012, Duke Energy Ohio, Inc. (“Duke Energy Ohio” or “Company”) filed an Application to Adjust its Alternative Energy Recovery Rider (“AER-R”). On February 20, 2013, the Public Utilities Commission of Ohio (“Commission”) requested its Staff issue a request for proposal of auditing services. Baker Tilly Virchow Krause, LLP (“Auditor”) was selected to perform the audit and submitted its Audit of the Alternative Energy Resource Recovery Rider of Duke Energy Ohio, Inc., (“Audit Report”) on October 3, 2013. On November 1, 2013, the Attorney Examiner invited interested stakeholders to file comments. Direct Energy timely filed a Motion to Intervene on November 25, 2013. Direct Energy is the only competitive retail electric supply (“CRES”) provider to request intervention in this proceeding.

Also on December 2, 2013, Direct Energy timely filed Initial Comments. On December 2, 2013, Duke Energy Ohio filed a Memorandum Contra the Motion to Intervene of Direct Energy. Direct Energy hereby files its timely Reply to Duke Energy Ohio'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 November 25, 2013 Motion to Intervene into this Reply. 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.

The proper calculation of the AER-R poses a substantial interest to Direct Energy inasmuch as the AER-R is a bypassable rider that affects the price to compare for shopping customers. Direct Energy's ability to compete in the Duke Energy Ohio market is directly affected by the AER-R. The Audit Report (at 4-5) makes several recommendations regarding renewable energy credit ("REC") purchase costs recovered by the AER as well as suggests a possible monthly adjustment to the AER-R as compared to the current quarterly adjustments. Further, the Audit Report details a transaction between Duke Energy Ohio and its affiliated CRES provider, Duke Energy Retail Services, Inc. ("DERS"). Any transaction between a utility with its affiliated CRES provider provides other unaffiliated CRES providers a real and substantial interest in ensuring a utility's affiliated CRES provider is not provided unfair advantage over other CRES providers.

Direct Energy's real and substantial interest in this proceeding is evident. The legal positions of Direct Energy are (as explained in its Motion to Intervene and as also explained

below) directly related to the merits of this case. Direct Energy's timely participation in this case pursuant to the Attorney Examiner's November 1, 2013 Entry will not prolong or delay the proceedings. As the only CRES provider to intervene in this case,¹ no other party could possibly represent Direct Energy's interests and Direct Energy will significantly contribute to the full development and equitable resolution of the factual issues in this case that impacts all CRES providers. Direct Energy's Motion to Intervene should be granted.

Duke Energy Ohio's Memorandum Contra challenges Direct Energy's intervention on various grounds. Duke Energy Ohio's Memorandum Contra should be summarily rejected.

Duke Energy Ohio first asserts that Direct Energy has failed to offer any reason to intervene that is not already an area of inquiry by Staff and that the audit report raises none of the issues raised by Direct Energy.² Duke Energy Ohio also asserts that Direct Energy is "undeniably unaffected" by this Application and that the corporate separation concerns raised by Direct Energy were not raised by the Audit Report.³ The fact that Staff (or its Auditor) may have reviewed an area of inquiry (such as the price of the AER-R or utility-affiliate transactions) does not exclude a party like Direct Energy from participating in a case. And, the fact that an area of inquiry has been addressed that is of direct impact to Direct Energy demonstrates the very interest that Direct Energy must show to intervene in this case and strengthens the case for Direct Energy's intervention. The Staff cannot represent Direct Energy's interest in this case and there is no duplication. Further, regarding the pass-thru transaction, it appears the auditor did not explore the additional issues regarding corporate separation that Direct Energy seeks to explore.

¹ Direct Energy notes it believes CRES providers ordinarily each have standing on their own to intervene in Commission cases.

² Duke Energy Ohio Memorandum Contra at 2.

³ Id. at 3.

There appears to be no statement in the Audit Report that the Auditor did in fact review the transactions from the perspective of corporate separation concerns and found none.

Duke Energy Ohio also states that the issues Direct Energy seeks to raise are unrelated to whether Duke complied with the mandates and whether the accounting is correct.⁴ The issues Direct Energy seeks to raise (and has raised in its Initial Comments) are directly related to the Audit Report and how Duke Energy Ohio went about complying with its renewable energy mandates. As noted above, there appears to be no statement in the Audit Report that the Auditor did in fact review the transactions from the perspective of corporate separation concerns and found none. This issue deserves further exploration. Further, the “pass-thru” transaction with DERS implicates the accuracy of the accounting inasmuch as the Auditor found an accounting error with the transaction. Direct Energy is entitled to intervene to review the “pass-thru” transaction, including the accounting discrepancies identified in the Audit Report as well as any attending anti-competitive concerns possibly raised by the “pass-thru” transaction.

Duke Energy Ohio further asserts that Direct Energy cannot make any contribution to the development or resolution of factual issues as the Staff and the Auditor have issued their report and therefore Direct Energy, by definition, will unduly prolong or delay the proceeding.⁵ Direct Energy is timely participating pursuant to the timeframes established by the Attorney Examiner and the Company has not identified any way in which Direct Energy has or will unduly delay or prolong the proceeding. If we accept Duke Energy Ohio’s argument that once the Auditor makes its recommendations there is nothing else to discuss, then nobody could intervene in any case where an Auditor files a report. Direct Energy heartily disagrees with that contention and believes accepting that logic would establish dangerous precedent for the Commission.

⁴ Id. at 3.

⁵ Id. at 3.

Finally, Duke Energy Ohio contends that any matters or concern to Direct Energy regarding competitive market issues can be resolved in the Commission Ordered Investigation in Case No. 12-3151-EL-COI. The 12-3151-EL-ORD docket will not resolve any utility-specific retail competition issues and therefore that docket provides no opportunity for the review of the transactions at issue in this docket. Duke Energy Ohio fails to point to any part of that docket where Direct Energy's particular concerns in this case will be resolved.

C. Conclusion

Direct Energy meets the Commission's criteria for granting intervention. Further, the Commission's precedent notes it is the Commission's policy "to encourage the broadest possible participation in its proceedings⁶." 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."⁷ Granting Direct Energy's Motion to Intervene would also be consistent with the precedent of both the Commission and the Ohio Supreme Court.

Direct Energy respectfully requests that the Commission grant its Motion to Intervene and that it be made a full party of record.

Respectfully Submitted,

/s/ Joseph M. Clark

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⁶ See, e.g., *Cleveland Elec. Illum. Co.*, PUCO Case No. 85-675-EL-AIR, Entry at 2 (January 14, 1986).

⁷ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853 at ¶20.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Reply to Duke Energy Ohio's Memorandum Contra of Direct Energy Services, LLC and Direct Energy Business, LLC was served this 6th day of December, 2013 by electronic mail delivery upon the persons listed below.

/s/ Joseph M. Clark

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/6/2013 4:15:53 PM

in

Case No(s). 12-0802-EL-RDR

Summary: Reply to Duke Memorandum Contra electronically filed by JOSEPH CLARK on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC