BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Commission's Review of Chapter 4901:1-25 of the Ohio Administrative Code, Regarding Market Monitoring.	)))))	Case No. 12-2053-EL-ORD

INITIAL COMMENTS OF DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC

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I. INTRODUCTION

On January 29, 2014, the Public Utilities Commission of Ohio ("Commission") issued an Entry in the above-captioned docket and set an initial comment deadline of February 26, 2014, and a reply comment deadline of March 13, 2014. Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy") now respectfully submits its Initial Comments in this proceeding.

II. INITIAL COMMENTS

Direct Energy opposes the additions to the market monitoring rules proposed by Staff as they refer to a rule (4901:1-42-01) of the Administrative Code that has not yet been adopted and conflict with this draft rule.

Rule 4901:1-25-01 – Definitions

The proposed rule recommends that the "green pricing program" shall have the same meaning as set forth in Rule 4901:1-42-01 of the Ohio Administrative Code. Unfortunately, the adoption of Chapter 4901:1-42 to implement Green Pricing Program rules under case number

12-2157-EL-ORD has not yet been decided. The reference to Rule 4901:1-42-01 should be removed and replaced with a new definition inasmuch as the referenced rule is not effective.

Direct Energy recommends the Commission not simply cut and paste in the definition of "green pricing program" in draft Rule 4901:1-42-01 into Rule 4901:1-25-01(M). Proposed Rule 4901:1-42-01(F) defines "green pricing program" as

> a program in which an Ohio electric distribution utility or CRES offers an electric product in which the product is marketed based on its fuel source and/or emissions profile. Such programs may include the use of renewable energy credits.

The draft definition of "green pricing program" in Rule 4901:1-42-01 is too broad and could encompass products that are not ordinarily considered "green" products. For example, a product from a natural gas-fired source or from nuclear generation would be considered a "green" product. Direct Energy respectfully suggests the Commission define "green pricing program" as

> a program in which an Ohio electric distribution utility or CRES offers an electric product in which the product is marketed based on its attributes as a renewable energy product. A renewable energy product shall be any product whose generation source is a renewable energy resource, as defined in Section 4928.01(A)(37), Revised Code. Such programs may include the use of renewable energy credits.

This definition would provide appropriate parameters around the definition by giving CRES providers certainty as to what counts as a "green pricing program." This definition also provides a good balance between providing Staff the relevant information they want to oversee the market for "green" products while also minimizing the reporting burden for CRES providers and electric distribution utilities.

Rule 4901:1-25-02(A)(3)(d) – Market monitoring – reporting requirements

Rule 4901:1-25-02(A)(3)(d) proposes CRES providers supply to Staff on a quarterly basis the number of customers participating in CRES-offered green pricing programs and the volume of participation in such programs. Direct Energy opposes the addition of this rule

inasmuch as it conflicts with proposed rules in Chapter 4901:1-42 and it does not adequately protect competitively sensitive data.

First, assuming that the Commission plans to adopt Chapter 4901:1-42 to implement green pricing program rules (through case number 12-2157-EL-ORD), then this proposed rule is in direct conflict. Under Rule 4901:1-42-03, CRES providers are required to file *semi-annually* the monthly number of participants and the monthly volume of such participation. Meanwhile Rule 4901:1-25-02(3)(d) would require CRES providers to submit this information *quarterly*.

Moreover, 4901:1-25-02(A)(3)(d) adds the additional requirement that CRES providers supply this information by *customer class*. By providing the monthly number of participants and volumes by customer class, it would be possible for an interested party to back into how popular a product is using the Commission's own apples to apples chart. To avoid confusion and prevent the release of potentially competitive sensitive data, Direct Energy recommends that the Commission adopt the reporting requirements proposed in Rule 4901:1-42-03. Rule 4901:1-42-03 limits the granularity of information to number of participants and usage which in turn provides additional protections from a competitor potentially accessing competitively sensitive information.

Finally, as with all customer count and product related information currently reported by CRES providers, the Commission should reaffirm in its Order in this case that any information submitted pursuant to new Rule 4901:1-25-02(A)(3)(d) will enjoy the same automatic protection from public disclosure as information submitted in compliance with subsections (a)-(c) of Rule 4901:1-25-02(A)(3). *See* Rule 4901:1-25-02(A)(5)(b).

III. CONCLUSION

Direct Energy respectfully requests the Commission review both chapters 4901:1-42 and 4901:1-25 to eliminate potential conflicts and update rule 4901:1-25 accordingly. Direct Energy also reserves the right to file reply comments in this docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document will be served via electronic mail to the e-mail addresses below on this 26th day of February, 2014 as well as electronically on February 27, 2014 to all parties who timely submit Initial Comments in Case No. 13-2029-EL-ORD when the identities of such commenters are known.

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