

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio for Approval of the Fourth)	
Amended Corporate Separation Plan under)	Case No. 14-0689-EL-UNC
Section 4928.17, Revised Code, and)	
Chapter 4901:1-37, Ohio Administrative)	
Code.)	

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its)	Case No. 14-0690-EL-ATA
Retail Tariff, P.U.C.O. No. 19.)	

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

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I. INTRODUCTION

On April 16, 2014, Duke Energy Ohio (“Duke”) filed an Application with the Public Utilities Commission of Ohio (“Commission”) for approval of an amended corporate separation plan as well as authority to amend its retail tariff. On May 6, 2014, the Attorney Examiner in this case set an initial comment deadline of May 15, 2014 and a reply comment deadline of May 21, 2014. Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”) respectfully submits its Initial Comments in this proceeding.

II. INITIAL COMMENTS

Enhanced Employee Transfer Transparency

Page 72 of the proposed Fourth Amended Corporate Separation Plan (Appendix A) lists certain items that must be contained in the cost allocation manual (“CAM”). Number six (6) of the listed items states as follows: “A copy of all transferred employees’ (from the electric utility to an affiliate or vice versa) previous and new job descriptions.” Direct Energy suggests an enhancement to this disclosure. Specifically, Direct Energy requests the Commission require the CAM to specifically indicate, as applicable to an electric utility employee transfer to an affiliate, whether the employee played any role in the development or filing of an electric security plan (“ESP”) or market rate offer (“MRO”) filing.¹ And, if the transferred employee did play any role in the development or filing of an ESP or MRO filing, the details in the CAM should include, at a minimum, the date the employee was transferred to the affiliate and a detailed description of the employee’s role in the development or preparation of the ESP or MRO filing. Such a provision would help ensure transparency and that Duke affiliates do not possess any competitive advantage over other competitive retail electric service (“CRES”) providers who had no advance knowledge of the filing and its details.

Other Products or Services

Duke requests (on proposed pages 84-85) new language that would permit Duke to offer other products and services other than retail electric service, consistent with Ohio policy. Direct Energy opposes Duke’s proposal. Duke should instead focus on its core distribution business. Duke acknowledges in its tariff language that the services it proposes to offer may be obtained from other suppliers. Duke fails to provide any justification (such as a lack of suppliers for these

¹ See also *In the Matter of the Review of Ohio Adm.Code Chapter 4901:1-37, Corporate Separation for Electric Utilities and Affiliates*, Initial Comments of Direct Energy Services, LLC and Direct Energy Business, LLC at 4-5 (January 17, 2014).

services) or examples where customers are asking for these types of services from their distribution utility. Duke, as a customer's incumbent monopoly utility, possesses an inherent advantage over other competitors in these unregulated environments. Duke's entrance into the market for these types of products and services could cause significant financial harm to other competitors (especially small businesses) who do not benefit from the same type of built-in goodwill or credibility that attaches to the utility's name.

Additionally, Duke fails to adequately explain how these new products and services will not be subsidized by its utility business. Duke only states that it will charge customers at least its "fully allocated cost." This ambiguous term provides the Commission no amount of confidence that Duke's ratepayers will not subsidize the offering of these products and services. Indeed, there is no definition or other worksheet provided that explains what costs make up the "fully allocated cost" amount. The Commission should be skeptically asking lots of questions. For example, does the "fully allocated cost" include all overhead (salaries, office space, health insurance costs, other insurance costs, workers' compensation costs, etc...) and support (costs of internal Duke employees to provide help and process any requests or requirements for those employees) related to the employee? How does Duke calculate the fully allocated cost? Also, will Duke use current employees to sell and service these products and services? For example more specifically, will customers call the ordinary Duke call center for questions about the products and services? Will ordinary Duke call center representatives also solicit customers for these products when the call regarding distribution service? How has Duke derived what those sorts of costs will be and where is the cost of service study to demonstrate or prove the actual costs for those services? For brevity's sake Direct Energy omits the many other similar

questions that the Commission should be asking. Regardless, this complexity by itself also provides a stand-alone basis to reject Duke's proposal.

To the extent that Duke is permitted to offer these types of services, the Commission should ensure that any Duke assets used to provide these products are also made available to other competitors on a competitively neutral basis. For example, if Duke puts these charges on customer's bills, then other companies supplying similar services should also be permitted (on the same terms and costs as Duke) to put those charges on their bills for the same amount that it costs Duke to put it on the bill. Additionally, if Duke puts bill inserts in bills or otherwise advertises for these services, the same opportunities should be made available to competitors for these services for the same cost. And, if call center employees take calls about the products or services, then the call center employees should also be required to inform customers about other similar products and services from other companies. For brevity's sake Direct Energy omits the laundry list of questions that remain, but again this complexity by itself provides a stand-alone basis to reject Duke's proposal.

Finally, to the extent Duke is permitted to offer these types of products and services, Duke should only be permitted to offer these products and services through a separate affiliate and prohibit that separate affiliate from using any entity legal name, trade name, "doing business as" name, or logo/graphic that shares or utilizes in any way the utility's name unless it is accompanied by a conspicuous disclaimer that the company is not the utility (similar to the rules applicable to CRES providers who are affiliates of electric utilities). Additionally, the Commission should require all affiliate marketing materials to provide disclosure of the affiliate relationship near any logo which uses a name similar to the utility. Simply using a name or logo/graphic of the utility will provide the affiliates an advantage and this would help to mitigate

any such advantage.² If such a disclosure is appropriate for a non-affiliated company licensing a utility-affiliated name or logo, then similar a requirement for a company who is actually an affiliate of the utility is even more important to prevent customer confusion and ensure a level playing field in the marketplace.

III. CONCLUSION

Direct Energy respectfully requests the Commission adopt its proposals contained in these Initial Comments and reserves the right to file reply comments in this docket.

Respectfully submitted,

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² See *In the Matter of the Complaint of the Ohio Consumers' Counsel, Stand Energy Corporation, Incorporated, Northeast Ohio Public Energy Council, and Ohio Farm Bureau Federation*, PUCO Case No. 10-2395-GA-CSS, Opinion and Order (August 15, 2012).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served *via* electronic mail on the Parties below this 15th day of May, 2014.

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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