

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

Direct Energy Business, LLC,

Complainant,

v.

Duke Energy Ohio, Inc.

Respondent.

Case No. 14-1277-EL-CSS

COMPLAINT

Pursuant to Ohio Revised Code (“R.C.”) 4905.26, 4905.28, 4905.32, 4905.32, 4905.54, 4905.04, 4905.05, 4905.06, 4928.11, and 4928.16, Direct Energy Business, LLC (“Direct”) brings this Complaint against Duke Energy Ohio, Inc. (“Duke”), and states as follows:

OVERVIEW

This Complaint follows nineteen months of efforts by Direct to obtain Duke’s voluntary resolution of metering errors that precluded Direct from properly billing its retail electricity customer for hundreds of thousands of dollars in electric service charges, including charges for energy service and pass-through of certain transmission service charges. These same metering errors have also caused Direct to incur millions of dollars of erroneous energy charges from PJM Interconnection, L.L.C (“PJM”). PJM requires resettlement of errors within sixty days or PJM imposes a procedural requirement that all load serving entities agree to settle. In spite of Direct’s concerted efforts to find compromise solutions through resettlement and its considerable patience, Duke has failed to correct these errors in a timely manner and failed to permit Direct to both properly bill its customer and receive proper billing of PJM charges. Duke’s failures violate

the Commission's metering rules and constitute unjust, unreasonable, and unjustly discriminatory service to Direct and Direct's retail customer and unjustly preferential service to Direct's competitors, all under Duke's tariffs that are on file with this Commission. Accordingly, the Commission has jurisdiction and grounds to grant this Complaint under R.C. 4905.26 and R.C. 4928.16(A)(2). The Commission has statutory authority pursuant to R.C. 4928.16(B)(1) to order the restitution sought herein based on these tariff violations and based on Duke's violation of the Commission's metering rules.

PARTIES AND JURISDICTION

1. Direct is a Delaware limited liability company with its principal place of business located in Pittsburgh, Pennsylvania. Direct (f/k/a Strategic Energy, LLC) applied for and received a competitive retail electric service ("CRES") certificate from the Commission in Case No. 00-1758-EL-CRS to provide aggregation and power marketing services. The certificate (No. 00-005(1)) was issued pursuant to Ohio Adm. Code 4901:1-24-(01-13) and 4901:1-21-(01-15) and R.C. 4928.08 and was effective October 27, 2000. This certificate, as renewed and amended, is presently in effect and has been in effect at all times following its issuance.
2. Duke is a public utility and an electric distribution company ("EDC") with service territory in nine counties in the southwestern corner of Ohio, with its principal place of business located in Cincinnati, Ohio. Duke provides Certified Supplier Services to Direct pursuant to its Certified Supplier Tariff, P.U.C.O. Electric No. 20 ("Supplier Tariff"). These services include, *inter alia*, metering customer load for purposes of CRES billings to its customer and for purposes of PJM settlement and billing to the CRES. As discussed below, this Complaint arises because of Duke's provision to PJM of inaccurate

meter data used for settlement with respect to one Direct customer, such that Direct could not accurately bill its customer and was overbilled by PJM.

3. The Commission's jurisdiction over this Complaint is plainly apparent. R.C. 4905.26 provides that the Commission shall initiate a hearing on a complaint against a public utility if presented with reasonable grounds showing that:

any rate, fare, charge, . . . schedule, classification, or service, . . . or service rendered . . . is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential

In this case, Duke has provided Certified Supplier Services—an Ohio Commission-regulated service—to Direct that are unreasonable, unjust, insufficient, discriminatory, and preferential because Duke's metering has produced inaccurate results. As a result, Direct cannot accurately bill its customer and Direct has been over-billed by PJM in the amount of millions of dollars.

4. The Commission's jurisdiction over this matter is provided by a number of statutory grants of authority. R.C. 4905.04 provides the Commission with the "the power and jurisdiction to supervise and regulate public utilities . . . , [and] to require all public utilities to furnish their products and render all services exacted by the commission or by law . . ." R.C. 4905.05 extends the Commission's jurisdiction to "the records and accounts of the business [of the public utility] done within this state" R.C. 4905.06 grants the Commission general supervisory authority over all public utilities, including the power to examine whether the public utility is in "compliance with all laws [and] orders of the commission"

5. R.C. 4905.28 provides the Commission with jurisdiction over public utility metering, with the intent that the Commission “secure the accuracy of all meters and appliances for measurements.” The Commission has enacted rules implementing this directive, including Ohio Adm. Code 4901:1-10-05(B), which states in part that “No metering device shall be placed in service or knowingly allowed to remain in service if it does not comply with these standards.” Ohio Adm. Code 4901:1-10-05(F) states that, “Metering accuracy shall be the responsibility of the electric utility.”
6. R.C. 4905.32 requires public utilities to provide services in accordance with their tariffs on file with the Commission and in a uniform manner. R.C. 4905.54 requires public utilities to comply with the Commission’s orders and provides for civil penalties.
7. The Commission’s jurisdiction over Duke’s provision of Certified Supplier Services is plainly apparent. R.C. 4928.11 provides the Commission with authority to “specify minimum service quality, safety, and reliability requirements for noncompetitive retail electric services supplied by an electric utility in this state, to the extent such authority is not preempted by federal law.” R.C. 4928.16(A)(2) states:

The commission also has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility has violated or failed to comply with any provision of sections 4928.01 to 4928.15, any provision of divisions (A) to (D) of section 4928.35 of the Revised Code, or any rule or order adopted or issued under those sections

R.C. 4928.35(C) states:

The schedule under division (A) of this section containing the unbundled distribution components shall provide that electric distribution service under the schedule will be available to all retail electric service customers in the electric utility's certified territory and their suppliers on a nondiscriminatory and comparable basis on and after the starting date of competitive retail electric service.

FACTS

8. On January 4, 2013, Direct began providing competitive retail electricity service to its customer SunCoke Energy, Inc. (“SunCoke”) at SunCoke’s Middletown, Ohio cokemaking facility. SunCoke is “dual billed” by both Duke and Direct. Direct bills SunCoke for the competitive retail electricity services that Direct provides to SunCoke. Duke bills SunCoke for the non-competitive portion of the electricity service provided.
9. Duke provides Certified Supplier Services to Direct pursuant to its Commission-jurisdictional Supplier Tariff. “‘Certified Supplier Services’ means those services that provide the interface and coordination between the Certified Supplier and the Company in order to effect the delivery of Competitive Retail Electric Service to serve End-use Customers located within the Company’s service territory.” Supplier Tariff, Sheet No. 20.3. Duke provides these Certified Supplier Services to CRES suppliers, including Direct. These services include, *inter alia*, metering customer load for purposes of CRES billings to its customer and for purposes of PJM billings to the CRES. *See* Supplier Tariff, Sheet No. 38.2 (Metering Services and Obligations), & Sheet No. 44.2 (Meter Data Management).
10. For the period January 2013 through July 2013, Duke reported load data to PJM for Direct’s loads that included approximately 27,000 MWh per month attributed to Direct’s customer SunCoke. However, Duke invoiced SunCoke for utility charges during the same period based on average monthly usage of approximately 4,275 MWh per month. Duke corrected the meter data submitted to PJM for the months of March through July within the respective sixty-day resettlement windows. The months of January and February remain outstanding.

11. Duke acknowledges that the meter data Duke provided to PJM were erroneous and that Duke's own invoices to SunCoke reflected the correct meter data. However, Duke has failed to initiate the PJM resettlement process for this customer in a timely manner for the January 2013 and February 2013 time period.
12. As a result, PJM's invoices to Direct were based on energy usage over six times higher than the actual amount of energy consumed by SunCoke and Direct estimates it overpaid PJM by approximately \$7 million for this period. Direct is not permitted to withhold payments from PJM. The amount overpaid remaining after corrections for March through July is approximately \$2 million for January and February.
13. Direct raised this issue with Duke as soon as the meter data for January 2013 became available in February 2013. Duke was able to correct the metering error, such that it did not appear in some periods after July 2013, and Duke was able to obtain resettlement by PJM in other periods after July 2013.
14. Duke initially promised to provide PJM with the correct meter data and assist Direct in obtaining a resettlement by PJM for the January 2013 through July 2013 period. However, Duke has failed to diligently pursue the matter.
15. Due to Duke's delay in resettlement, the PJM process now requires unanimous agreement of all load serving entities for PJM to resettle. Despite Duke's delay resulting in the inability to resettle within the sixty-day process, Duke's last position was that the burden falls on Direct to obtain the unanimous consent of nearly forty other retail suppliers doing business with Duke before Duke will transmit the correct meter data to PJM and initiate the resettlement process. In other words, Duke believes that Direct must convince its competitors that Direct deserves a refund, even though the metering error is plainly

Duke's. Duke sent a request to market participants for consent to resettlement. The request indicated a potential cost to those participants. However when only 4 of the 39 participants responded, Duke took no further action.

COUNT I

VIOLATION OF THE METERING PROVISIONS IN OHIO ADM. CODE 4901:1-10-05(B) & 4901:1-10-05(F)

16. Ohio Adm. Code 4901:1-10-05(B) states in part that "No metering device shall be placed in service or knowingly allowed to remain in service if it does not comply with these standards." By its own admission, during the period of January 2013 through July 2013, Duke knowingly allowed an inaccurate metering device to remain in service. Accordingly, Duke has violated Ohio Adm. Code 4901:1-10-05(B).
17. Ohio Adm. Code 4901:1-10-05(F) states that "Metering accuracy shall be the responsibility of the electric utility." By failing to submit corrected meter data to PJM and initiate resettlement in a timely manner for the January 2013 through July 2013 period, Duke has failed to take responsibility for the accuracy of its metering. Accordingly, Duke has violated Ohio Adm. Code 4901:1-10-05(F).

COUNT II

DUKE'S RENDERING OF METERING SERVICES UNDER ITS SUPPLIER TARIFF HAS BEEN UNJUST, UNREASONABLE, UNJUSTLY DISCRIMINATORY AND UNJUSTLY PREFERENTIAL IN VIOLATION OF R.C. 4905.32 & R.C. 4928.35(C)

18. Duke provides Certified Supplier Services to Direct pursuant to its Supplier Tariff. These services include, *inter alia*, metering customer load for purposes of CRES billings to its customer and for purposes of PJM billings to the CRES. This Complaint arises because of Duke's provision of inaccurate meter data to Direct and to PJM with respect to

Direct's customer, SunCoke, such that Direct cannot accurately bill its customer and was overbilled by PJM. Moreover, despite Duke's knowledge of the error and Duke's own delay causing the need for resettlement, Duke has now disavowed any obligation to correct this situation by claiming that without unanimous support for resettlement there is nothing they can do.

19. As a result, Duke has provided Certified Supplier Services to Direct that are unreasonable, unjust, unjustly discriminatory, and unjustly preferential. Duke's metering has produced inaccurate results, and Duke has transmitted this inaccurate data to PJM. As a result, Direct was not able to accurately bill its customer and Direct has been over-billed by PJM in the amount of millions of dollars. The result places Direct at a competitive disadvantage by aggravating its customer relationship and increasing its costs unfairly. Direct has overpaid millions in PJM charges due to Duke's failure to accurately meter and resolve meter errors in a timely manner. This result is patently unreasonable, unjust, unjustly discriminatory, and unjustly preferential. Accordingly, the Commission should grant Direct's Complaint pursuant to R.C. 4905.26, following a hearing, to the extent necessary.
20. These same circumstances constitute a violation of R.C. 4905.32, which requires public utilities to provide services in accordance with their tariffs on file with the Commission and in a uniform manner. By providing inaccurate metering services to Direct, Duke has failed to provide Certified Supplier Services in the manner required by law.
21. Similarly, Duke's actions violate R.C. 4928.35(C). This provision dictates that Duke make "the unbundled distribution components [of] . . . electric distribution service . . . available to all retail electric service customers in the electric utility's certified territory

and their suppliers on a nondiscriminatory and comparable basis on and after the starting date of competitive retail electric service.” (Emphasis added.) Duke’s provision of metering services under the Supplier Tariff has been discriminatory and non-comparable.

REQUEST FOR RELIEF

Wherefore, Direct respectfully requests that, pursuant to R.C. 4905.26 and R.C. 4928.16(B), the Commission issue an order:

A. Directing Duke to immediately submit corrected meter data to Direct and to PJM with respect to Direct’s customer loads for the January 2013 through February 2013 period, directing Duke to initiate resettlement with PJM for that period, directing all affected CRES providers to consent to resettlement, and further directing Duke to provide Direct and PJM with timely accurate meter data going forward.

B. As an alternative to resettlement, directing Duke to pay restitution to Direct in the amount of approximately \$2 million, the exact amount to be proven in this proceeding, no later than thirty days following the issuance of the Commission’s order, as compensation for the effect of Duke providing inaccurate meter data to PJM and failure to timely resettle such inaccurate data in relation to Direct’s customer SunCoke.

Direct is a customer of Duke’s consuming unbundled non-competitive retail electric services under Duke’s Certified Supplier Tariff. This Complaint has been properly brought pursuant to, *inter alia*, R.C. 4928.16(A)(2), which grants the Commission jurisdiction under R.C. 4905.26 “to determine whether an electric utility has violated or failed to comply with any provision of sections 4928.01 to 4928.15, any provision of divisions (A) to (D) of section 4928.35 of the Revised Code, or any rule or order adopted or issued under those sections.” R.C. 4928.16(A)(2). R.C. 4928.35(C) requires that Duke provide the unbundled distribution

components of electric distribution service on a nondiscriminatory and comparable basis and Duke has failed to do so. Accordingly, the Commission has authority to order restitution under R.C. 4928.16(B)(1), which provides such restitution authority “in any complaint brought pursuant to division (A)(1) or (2) of this section.” *See Edward J. Santos v. Dayton Power and Light Co.*, Opinion and Order, Case No. 03-1965-EL-CSS at 17 (Mar. 2, 2005) (“In our review, we shall determine if DP&L’s action in this case constitutes a violation of any of these subdivisions or the Commission’s rules adopted pursuant to these subdivisions. Upon finding a violation, we may have grounds to award damages to the complainant.”).

Additionally, the Commission has cited R.C. 4928.11 as statutory authority for its metering rules in Ohio Adm. Code 4901:1-10-05. *See* notes accompanying Ohio Adm. Code 4901:1-10-05. Therefore, Ohio Adm. Code 4901:1-10-05 is a rule adopted under the sections specified in 4928.16(A)(2), the violation of which empowers the Commission to award restitution pursuant to R.C. 4928.16(B)(1). Accordingly, Duke’s violation of the Commission’s metering standards provides an alternative basis upon which the Commission may award restitution to Direct.

C. Directing Duke to pay Direct additional restitution in the amount of \$383 per day, from March 1, 2013 through the date Direct is made whole for excess PJM charges, either by way of refund from PJM or by restitution from Duke, to compensate Direct for Direct’s cost of capital stemming from the PJM overcharges.

D. Directing Duke to pay Direct additional restitution in the amount of its attorneys’ fees and costs stemming from this Complaint proceeding and the resolution of the underlying issues.

E. Directing Duke to immediately take all necessary steps to identify the underlying root causes of the metering errors described above and to institute a plan to ameliorate its metering

service deficiencies at its own expense, including timely resettlement of errors to avoid the need for unanimous consent in the future.

F. Directing that Duke pay a penalty, pursuant to R.C. 4905.54, for the inadequate service that Direct experienced, in an amount up to \$10,000 for each day that Duke has provided inadequate and discriminatory service, multiplied by the number of violations that the Commission finds have occurred.

Respectfully submitted,

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Counsel for Direct Energy Business, LLC

Dated: July 22, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing filing has been served upon the below-named person via regular U.S. Mail Service, postage prepaid, this 22nd day of July, 2014.

/s/ Gerit F. Hull
Gerit F. Hull

Service List

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7/22/2014 2:52:52 PM

in

Case No(s). 14-1277-EL-CSS

Summary: Application - Complaint of Direct Energy Business, LLC, Complainant, against Duke Energy Ohio, Inc., Respondent, electronically filed by Mr. Gerit F. Hull on behalf of Direct Energy Business, LLC