

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**DIRECT ENERGY BUSINESS, LLC,**

*Complainant,*

**v.**

**DUKE ENERGY OHIO, INC.,**

*Respondent.*

Case No. 14-1277-EL-CSS

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**MOTION TO DISMISS**

**BY**

**DUKE ENERGY OHIO, INC.**

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Now comes Duke Energy Ohio, Inc. (Duke Energy Ohio) and respectfully moves, pursuant to O.A.C. 4901-1-12, to dismiss this proceeding filed by Direct Energy Business, LLC (Direct Energy) because, at bottom, it seeks only to expedite PJM Interconnection L.L.C.'s (PJM) metering reconciliation procedures. However, as demonstrated herein, the only relief to which Direct Energy may avail itself – a rebilling by PJM – cannot be ordered by the Public Utilities Commission of Ohio (Commission). Rather, rebilling pursuant to a PJM-adopted resettlement process can only be done by PJM according to its tariff and related documents. Indeed, the Commission cannot authorize any of the claims for relief requested by Direct Energy.

Wherefore, for the reasons more fully set forth in the attached memorandum in support, Duke Energy Ohio respectfully requests that the Commission grant this motion to dismiss.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION**

Direct Energy's Complaint is nothing more than a creative attempt to manufacture a state regulatory-based cause of action against Duke Energy Ohio. Disgruntled with PJM resettlement procedures for alleged overcharges by PJM on two months' worth of invoices, Direct Energy attempts to cast Duke Energy Ohio as the wrongdoer by claiming – and more often insinuating – that Duke Energy Ohio somehow violated its Commission-approved tariff or Ohio law by committing unspecified “metering errors” and “metering service deficiencies.” Yet Direct Energy does not plead any violation of Ohio law and does not point to any breach of Duke Energy Ohio's tariff. Further, none of its alternate theories of recovery – thinly disguised as its request for relief – follow from any of the supposed violations it alleges in the Complaint. At the end of the day, Direct Energy takes issue with the speed and the requirements of the PJM resettlement process. Direct Energy's cause of action, if it has one, is with PJM at the Federal Energy Regulatory Commission (FERC), not with Duke Energy Ohio at the Commission. With the Complaint exposed for what it truly is, the Commission has no other choice but to dismiss the Complaint in its entirety.

### **II. FACTUAL BACKGROUND**

#### **A. The Relationship Between Duke Energy Ohio And Direct Energy Exists On Both the Retail And The Wholesale Levels.**

Duke Energy Ohio provides various services pursuant to Commission-approved tariffs. One such tariff is Certified Supplier Tariff, P.U.C.O. Electric No. 20 (Supplier Tariff), which was approved by the Commission on November 22, 2011.<sup>1</sup> The Supplier Tariff establishes the

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<sup>1</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 11-3549-EL-SSO, *et al.*, Opinion and Order (Nov. 22, 2011).

framework – at the retail level – for interaction between Duke Energy Ohio and those competitive retail electric service (CRES) providers active in its service territory, including Direct Energy. The Supplier Tariff thus makes provision for, among other matters, supplier registration, credit requirements, customer enrollment, metering services and obligations, billing services and obligations, and meter data management. The Supplier Tariff, however, does not establish the framework within which Duke Energy Ohio and CRES providers must operate at the wholesale level. And this is significant because Duke Energy Ohio and Direct Energy do not only engage in retail activities in connection with competitive retail services. Rather, because the energy and capacity used to supply all retail customers is a wholesale product, these two entities must interact with PJM.

The interaction between Duke Energy Ohio, on the one hand, and the load serving entities (LSEs) in its service territory, on the other, that allows for the latter to be billed for energy is derived from PJM's tariffs and other agreements. More specifically, pursuant to the Open Access Transmission Tariff (OATT) and its other agreements, PJM is the entity to bill all LSEs for wholesale energy that they may use. To enable PJM to accomplish this billing in respect of the Duke Energy Ohio service territory, Duke Energy Ohio provides meter data on behalf of all LSEs, including Direct Energy, to PJM. The meter data is provided on an individual basis, with Duke Energy Ohio providing data that is derived from meter readings for each end-use customer served by each LSE. However, when consolidated, this individualized information equals the total load in the Duke Energy Ohio service territory for any given point in time. Thus, all invoices issued by PJM for any given point will, when added together, reflect charges for all load in the Duke Energy Ohio territory.

Recognizing that PJM will bill of all LSEs, the Supplier Tariff identifies Duke Energy Ohio's obligations in respect of meter data management. Specifically, the Supplier Tariff provides that:

The Company, acting as the designated Meter Data Management Agent for the Certified Supplier, will supply hourly load data to Transmission Provider, for the Certified Supplier. The Company will provide this data in accordance with the OATT, including estimates when necessary. The Company will be held harmless for any actions taken while performing Meter Data Management Agent responsibilities. Meter data collected by the Company shall be used to calculate the quantity of energy actually consumed by a Certified Supplier's End-use Customer for a particular period. Such collection shall occur at the time of an End-use Customer's monthly meter read. Thus, in order to measure the energy consumed by all End-use Customers on a particular day, at least one month is required for data collection. Typically, the Company is able to calculate and provide hourly usage data for a Certified Supplier's load, for a calendar month, forty-five to sixty days after the end of that calendar month. It is the responsibility of the Certified Supplier to understand this process.<sup>2</sup>

As PJM is the billing entity for load usage by LSEs, including Direct Energy, it is also the entity to enable any reconciliation. As referenced in Direct Energy's Complaint, PJM has established two different methods for addressing errors in their invoices. The first method is one that, pursuant to PJM, must be completed within sixty days of the initial submission of data to PJM. If the initially reported information is adjusted or revised within the first sixty days, PJM will make the necessary adjustment, after notice from the utility and the LSE, or supplier, for the customer to whom the information pertains.<sup>3</sup>

The second PJM-administered method is referred to informally by PJM as "resettlement C," which is prompted by the expiration of the initial sixty-day period. Under resettlement C, PJM must have express authority from all LSEs that would have been billed by PJM at that

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<sup>2</sup> P.U.C.O. Electric No. 20 at ¶ 14.1 (herein after "Supplier Tariff").

<sup>3</sup> PJM Manual 29: Billing, Section 2.1.1; PJM InSchedule User Guide, Section 1.6.3; Customer Guide to PJM Billing, Spot Market Energy.

point in time when one invoice reflected incorrect information.<sup>4</sup> The need for all LSEs to consent is likely based on the fact that a reconciliation outside the sixty-day window would affect all LSEs. Again, as noted above, the total amount reflected in all invoices by PJM equals the total load in the Duke Energy Ohio service territory at a given time. If one LSE received an invoice for energy supplied to one end-use customer that was too high, all other LSEs necessarily received invoices that were too low. And absent express authority from it, an LSE will not be included in a PJM resettlement by PJM under its resettlement C option.

**B. The Reconciliation Period At Issue Is One That Must be Pursued Under Resettlement C.**

Direct Energy contends that Duke Energy Ohio provided incorrect meter information for SunCoke, one retail, end-use customer served by Direct Energy, for the period between January and July 2013.<sup>5</sup> As a result, Direct Energy claims that it has been overbilled by PJM. Importantly, however, Direct Energy concedes that the months of March through July 2013 have been corrected “within the respective sixty-day resettlement windows.”<sup>6</sup> Thus, the only months at issue in respect of Direct Energy’s Complaint, and for which it is seeking reconciliation of PJM bills, are January and February 2013.

To avoid the impediments at the wholesale level that require unanimous consent by all LSEs and given the lack of an affirmative obligation on the part of Duke Energy Ohio to initiate any reconciliation or resettlement, Direct Energy has filed this Complaint. It relies upon inapplicable Commission regulation and inaccurate references to statutory law and Commission

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<sup>4</sup> PJM Operating Agreement, Schedule 1, Section 3.6.2 stating “ For Market Participants that are Electric Distributors that request the debit and credit to be further allocated to all Network Service Users in their territory (as documented in the PJM Manuals), where all Load Serving Entities in the respective Electric Distributor territory agree, the appropriate debit or credit shall be applied among Network Service Users in proportion to their deliveries to load served in the applicable territory.” The PJM Operating Agreement is an agreement that is approved by the Federal Energy Regulatory Commission and subject to its jurisdiction. Although the language in this section does not specifically refer to this process as resettlement C, PJM refers to the process as resettlement C.

<sup>5</sup> Complaint, at ¶¶ 10-12.

<sup>6</sup> *Id.* at ¶ 10.

precedent in an effort to convince the Commission that it can impose monetary damages upon Duke Energy Ohio. But even taking Direct Energy's allegations as true, it is readily apparent that Direct Energy cannot state valid grounds for a complaint at the state level. Any criticisms with the PJM reconciliation process cannot be cured under existing Commission authority and, as discussed herein, Direct Energy's Complaint must be dismissed.

## **I. ARGUMENT**

### **A. The Crux of Direct Energy's Complaint – That Duke Energy Did Not Resettle Alleged Metering Errors Within The PJM Sixty-Day Resettlement Window – Is Beyond the Commission's Jurisdiction When Direct Energy Cannot Demonstrate That Duke Energy Ohio Violated Its Supplier Tariff.**

Assuming the facts stated in the Complaint to be true, the heart of Direct Energy's alleged grievance against Duke Energy Ohio is that corrected invoices for SunCoke remain outstanding for January and February 2013<sup>7</sup> and that it has been overcharged by PJM. Even though Direct Energy attempts to cast its complaint as a strict violation of Ohio's metering laws and regulations, its principal desired remedy is to force Duke Energy Ohio to implement resettlement on its behalf so that PJM may rebill prior invoices.<sup>8</sup> Yet the Commission lacks statutory jurisdiction over regional transmission organizations such as PJM.<sup>9</sup> As such, the Commission cannot force PJM to implement reconciliation procedures. Further, as discussed below, the Commission cannot, based on current authority, compel Duke Energy Ohio or all CRES providers in its service territory to act in contravention of those procedures.

The Supplier Tariff is the relevant tariff for purposes of Direct Energy's Complaint. Again, it establishes the relationship between the parties and concerns Direct Energy's primary

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<sup>7</sup> *Id.* at ¶¶ 10-13.

<sup>8</sup> *Id.* at p. 9 (asking for Duke Energy Ohio "to immediately submit corrected meter data to Direct [Energy] and PJM with respect to Direct [Energy's] customer loads for the January 2013 through February 2013 period, directing Duke to initiate resettlement with PJM for that period [and] directing all affected CRES providers to consent to resettlement").

<sup>9</sup> *See* Ohio Rev. Code § 4905.03(C) (excluding regional transmission organizations from the definition of "public utility company").

objection – one related to the PJM invoicing process. But the Supplier Tariff does not impose upon Duke Energy Ohio any obligation in respect of the PJM resettlement process. Indeed, the Supplier Tariff is void of any obligation on the part of Duke Energy Ohio to initiate resettlement – either within the first sixty days or at any time thereafter. Further, the Supplier Tariff delineates the time periods pursuant to which Duke Energy Ohio may generally act, but establishes no commitment on its part, either to perform by a time certain or with regard to the provision of data that underlies PJM billings. Specifically, the Supplier Tariff unambiguously provides the time period for which the Company is typically able to calculate and provide hourly usage data for a supplier’s load.<sup>10</sup> This typical period could last as long as sixty days, thus restricting application of the PJM sixty-day resettlement procedures to address adjustments. Additionally, the Supplier Tariff imposes no obligation on Duke Energy Ohio to initiate a PJM resettlement under the resettlement C procedures. And as the Supplier Tariff provides, CRES bear the obligation of understanding this process, which would necessarily include the time periods and their implication on PJM reconciliation procedures.<sup>11</sup> Moreover, the Supplier Tariff unambiguously provides that Duke Energy Ohio will be held harmless while performing Meter Data Management functions. The “Meter Data Management Agent” is defined in the Supplier Tariff as the party that provides “hourly metered load data to the RTO,” which in this case, is PJM.<sup>12</sup> Thus, under the governing Supplier Tariff, Duke Energy Ohio cannot be held liable for its dealings – or any delay in its dealings – with PJM.

Because the Supplier Tariff does not provide Direct Energy with an actionable claim relative to the PJM-initiated billing process, it relies upon unsubstantiated allegations,

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<sup>10</sup> Supplier Tariff at ¶ 14.1

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at Sheet No. 20.3, p. 3.



predicated upon inapplicable law or regulation that, as discussed below, do not give rise to a valid complaint against Duke Energy Ohio.

**B. Direct Energy Not Pled Adequate Facts To Establish Either Of The Two Counts In The Complaint.**

In an effort to invoke the Commission's jurisdiction, Direct Energy asserts that Duke Energy Ohio (i) violated the metering provisions of O.A.C. 4901:1-10-05(B) and 4901:1-10-05(F) and (ii) rendered metering services under its Supplier Tariff in an unjust, unreasonable, unjustly discriminatory and unjustly preferential manner in violation of R.C. Sections 4905.32 and 4928.35. A complainant before the Commission must allege "reasonable grounds" for complaint, including factual allegations entitling the complainant to the relief sought.<sup>13</sup> Direct Energy has not pled sufficient allegations – much less any facts – to establish any actionable claims under O.A.C. 4901:1-10-05(B) or (F) or R.C. Sections 4905.32 or 4928.35.

**1. Direct Energy Cannot State A Claim For Metering Provision Violations Without Identifying An ANSI Standard That Duke Energy Ohio Has Failed To Meet.**

O.A.C. 4901:1-10-05 sets for the obligations of electric distribution companies with regard to the metering services that they provide to end-use customers. Despite this fact, Direct Energy has filed its Complaint, alleging violations of this section of the Code as if it were an end-use customer. It is not and thus, as an initial matter, lacks standing to assert a violation of any meter regulations. This is evident from the lack of factual assertions on which Direct Energy relies in Count I of its Complaint.

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<sup>13</sup> See, e.g., *K&D Group, Inc. v. Cleveland Thermal Steam Distrib., LLC*, No. 11-898-HT-CSS, 2012 Ohio PUC LEXIS 531, at \*1 (Pub. Util. Comm'n May 30, 2012) (dismissing complaint for failure to allege reasonable grounds for relief under § 4905.26); *Tarry v. Ohio Edison Co.*, No. 09-1086-EL-CSS, 2010 Ohio PUC LEXIS 767, at \*1-2 (Pub. Util. Comm'n Jul. 14, 2010) (requiring a more definite statement of facts underlying complaint).

O.A.C. 4901:1-10-05(B) states:

A customer's electric usage shall be metered by commercially acceptable measuring devices that comply with "American National Standards Institute" (ANSI) standards. Meter accuracy shall comply with the 2008 version of the ANSI C 12.1 standards. No metering device shall be placed in service or knowingly allowed to remain in service if it does not comply with these standards.

Direct Energy's Complaint is wholly void of any reference whatsoever to the ANSI or to any of its metering standards. It is not clear, then, on the face of Direct Energy's pleading, whether the supposed violation of O.A.C. 4901:1-10-05(B) stems from the use of unacceptable measuring devices in general, or if it stems from a perceived deficiency in the accuracy of an authorized device. Rather, the only allegation made in support of this claim is that "Duke knowingly allowed an inaccurate metering device to remain in service."<sup>14</sup> Direct Energy does not, however, allege any facts to raise any reasonable inference that Duke Energy Ohio knowingly placed defective meters into service, or that if a meter was found to be defective, it did not take appropriate measures to repair the defect.

Similarly, Direct Energy has not set forth any factual allegations or reasonable grounds to demonstrate a violation of O.A.C. 4901:1-10-05(F). That provision states that "metering accuracy shall be the responsibility of the electric utility," and further provides that "upon request by a customer, the electric utility shall test its meter to verify its compliance with the ANSI C 12.1 standards within thirty business days after the date of the request."<sup>15</sup> Direct Energy does not allege anywhere in its Complaint that any Duke Energy Ohio customer requested that it test any meter to verify its accuracy.<sup>16</sup>

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<sup>14</sup> *Complaint* at ¶ 16.

<sup>15</sup> Ohio Admin. Code Rule 4901:1-10-05(F)(1) (emphasis added).

<sup>16</sup> See, e.g., *Lindy v. Duke Energy Ohio*, No. 11-2764, 2011 Ohio PUC LEXIS 657 at \*1-2 (Pub. Util. Comm'n May 26, 2011) (complainant alleged she had requested that Duke test an allegedly faulty meter).

Moreover, although O.A.C. 4901:1-10-05(F)(5) sets forth what the utility must do if the test results indicate a meter does not comport with ANSI standards, it requires that a test be conducted in the first instance. Direct Energy never alleges that a Duke Energy Ohio meter failed to meet ANSI standards because it cannot allege or prove that Duke Energy Ohio was ever required to test a meter. Further, and perhaps most critical to Direct Energy's misplaced reliance on O.A.C. 4901:1-1-10-05 is the fact that it is not a retail customer of Duke Energy Ohio. As such, it lacks standing to assert allegations of meter inaccuracy, as confirmed by the Supplier Tariff that delineates specifically what obligations Duke Energy Ohio has with regard to meter data.

Count I of the Complaint fails to state a reasonable grounds for a claim against Duke Energy Ohio.

**2. Direct Energy Does Not Identify Any Other Consumer To Establish Any Unjust, Unreasonable, Discriminatory Or Preferential Treatment Under Ohio Rev. Code §§ 4905.32 or 4928.35(C).**

Far from stating any facts to demonstrate that Duke Energy Ohio knowingly violated ANSI standards, Direct Energy's Complaint is entirely devoid of any factual allegations that Duke Energy Ohio failed to comply with its Supplier Tariff or that it unjustly discriminated against one CRES provider. Perhaps recognizing these shortcomings, Direct Energy alleges causes of action predicated upon state law. But the provisions on which it relies do not give rise to an actionable claim.

R.C. 4905.32 requires Duke Energy Ohio to collect rates in accordance with its Tariff and extend uniform service to all customers. Direct Energy alleges that Duke Energy Ohio has violated this provision "[b]y providing inaccurate metering services."<sup>17</sup> It neither cites which tariff provisions Duke Energy Ohio supposedly violated nor identifies any Duke Energy

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<sup>17</sup> Complaint at ¶ 20.

customer who received preferential treatment.<sup>18</sup> Thus, Direct Energy has failed to state a violation of R.C. 4905.32.

Similarly, Direct Energy has not set forth any reasonable grounds for a violation of R.C. 4928.35(C). As noted in Duke Energy Ohio's Answer to the Complaint, Direct Energy has selectively quoted R.C. 4928.35(C) to manufacture a claim against Duke Energy Ohio that does not actually exist under the law. Despite Direct Energy Ohio's characterization of the statute, Section 4928.35(C) pertains to the filing of schedules of unbundled rate components during the market development period and subsequent to the approval of a transition plan:

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 supplies on a nondiscriminatory and comparable basis on and after the starting date of competitive retail electric service. The schedule also shall include an obligation to build distribution facilities when necessary to provide adequate distribution service[.]<sup>19</sup>

There is no allegation in the Complaint that Duke Energy Ohio failed to provide the proper schedules required under R.C. 4928.35(C). Indeed, the Commission approved Duke Energy Ohio's transition plan in Case No. 9901658-EL-ETP and, as required by law, Duke Energy Ohio made its rate schedules available for unbundled services. R.C. 4928.35(C) is therefore wholly irrelevant to Direct Energy's Complaint, and cannot be used to establish the Commission's jurisdiction or a valid claim against Duke Energy Ohio.

**C. Direct Energy Requests Relief That Is Unrelated To Either Of Its Two Supposed Causes Of Action And Seek Remedies The Commission Is Without Authority To Provide.**

Direct Energy seeks restitution for the damages it has allegedly suffered as a result of the inaccurate invoices, not for any perceived metering violations or as remedy for any unjust,

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<sup>18</sup> See generally Complaint filed in *Fulmer Supermarkets, Inc. v. DP&L*, No. 97-640 (Public Util. Comm'n June 16, 1997) at ¶ 8 (alleging that monthly billings of complainant's different stores varied greatly).

<sup>19</sup> Ohio Rev. Code 4928.35(C) (emphasis added).

unfair, discriminatory or preferential treatment.<sup>20</sup> The Commission lacks authority to grant monetary damages,<sup>21</sup> and Direct Energy's request for damages wholly unrelated to its alleged causes of action is yet another reason to dismiss its Complaint in its entirety.

First, Direct Energy seeks an order directing Duke Energy Ohio to submit corrected meter data to PJM and to initiate resettlement with PJM for the January-February 2013 period and directing all affected CRES providers to consent to resettlement.<sup>22</sup> The Commission has no authority over PJM, and as such, cannot compel it to expedite its reconciliation procedures. Further, the Supplier Tariff contains no obligation on the part of Duke Energy Ohio to undertake any activity in respect of reconciliations.

As an alternative to such an outlandish order, Direct Energy requests that Duke Energy Ohio pay restitution in the amount of \$2 million as a result of providing inaccurate meter data to PJM and failure to timely resettle such inaccurate data in relation to SunCoke.<sup>23</sup> Direct Energy refers to Duke Energy Ohio's supposed violation of R.C. 4928.35(C) to support its request for \$2 million in damages. Yet, as stated above, Direct Energy has entirely mischaracterized R.C. 4928.35(C) in an attempt to manufacture a cause of action when that statutory provision is wholly irrelevant to any of Direct Energy's claims. That section deals with the requirements of unbundled rate schedules filed with the Commission. Duke Energy Ohio has complied with all such requirements and there is no allegation anywhere that it did not.

Direct Energy's reliance on *Edward J. Santos v. Dayton Power and Light Co.*<sup>24</sup> is also entirely misleading. In *Santos*, the Commission dismissed the complaint and found insufficient

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<sup>20</sup> *Complaint* at p. 9-10.

<sup>21</sup> *Cunningham v. Duke Energy Ohio, Inc.*, No. 11-5584, 2012 Ohio PUC LEXIS 98, at \*3-4 (Pub. Util. Comm'n Jan. 27, 2012); *Wiley v. Duke Energy Ohio, Inc.*, No. 10-2463, 2011 Ohio PUC LEXIS 524, at \*4 (Pub. Util. Comm'n May 3, 2011).

<sup>22</sup> *Complaint* at p. 9.

<sup>23</sup> *Id.*

<sup>24</sup> Case No. 03-1965-EL-CSS.

evidence to award any damages to the complainant.<sup>25</sup> Moreover, the matter at issue in *Santos* was a service-related issue, and not just an accounting discrepancy. In *Santos*, the complainant experienced a power surge that caused damage to his personal property.<sup>26</sup> Here, there is no claim that any electric service that Duke Energy Ohio provided to SunCoke resulted in power fluctuations. Notably, SunCoke is not even a party to this Complaint. There was no disruption of service, or service irregularities alleged in the Complaint. There was no damage to person or property as a result of any distribution.

Direct Energy further seeks Duke Energy Ohio to pay restitution in the amount of, or have PJM refund, \$383 per day starting March 1, 2013 to compensate Direct Energy for the “cost of capital” stemming from PJM overcharges.<sup>27</sup> Here again, the Commission is without jurisdiction to direct PJM to issue a refund or Duke Energy Ohio to pay restitution when PJM’s reconciliation procedures govern the manner in which Direct Energy is to be refunded for any overcharges. This request for relief also only underscores that Direct Energy’s complaint is really about the PJM reconciliation process, and not about any supposed metering violation or unfair treatment.

Similarly, Direct Energy’s request for Duke Energy Ohio to pay additional restitution in the amount of its attorneys’ fees<sup>28</sup> is unavailing when there is a process that governs resettlement. Any legal fees Direct Energy incurs for instituting this proceeding is its own doing when there is a resettlement procedure in place that the parties are following. Additionally, attorneys’ fees are unreasonable when Direct Energy has failed to plead essential elements of the its supposed causes of action.

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<sup>25</sup> *Id.* Opinion and Order, 8-9 (Mar. 2, 2005).

<sup>26</sup> *Id.* at 2-3.

<sup>27</sup> *Complaint* at p. 10.

<sup>28</sup> *Id.*

Direct Energy's request for Duke Energy Ohio to "identify the underlying root causes of the metering errors" and to "institute a plan to ameliorate its metering service deficiencies at its own expense" is ambiguous.<sup>29</sup> Direct Energy has not adequately alleged any violation of any statute or of Duke Energy Ohio's Supplier Tariff, and so the relief it seeks here is unclear.

Finally, Direct Energy's request for a penalty pursuant to R.C. 4905.54 is entirely unwarranted and unsupported by any allegations in the Complaint.<sup>30</sup> R.C. 4905.54 authorizes the Commission to assess a forfeiture for failure to comply with a Commission order, direction or requirement. Although Direct Energy claims that Duke Energy Ohio has violated the Revised Code, it fails to identify a single Commission order, directive or requirement that Duke has breached. Thus, there is absolutely no basis for any relief under R.C. 4905.54.<sup>31</sup>

Because Direct Energy is not entitled to any of the remedies it seeks in its request for relief, its Complaint should be dismissed out of hand.

### **III. CONCLUSION**

For all of the reasons set forth above, Duke Energy Ohio, Inc., respectfully requests that the Commission grant its motion to dismiss with prejudice.

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<sup>29</sup> *Id.* at pp. 10-11.

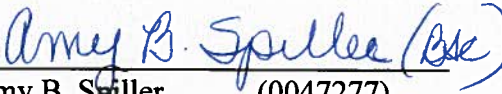
<sup>30</sup> *Id.* at p. 11.

<sup>31</sup> See generally *Lucas Cnty. Comm'rs v. PUC*, 80 Ohio St. 3d 344, 503 (1997) (affirming dismissal when Commission lacked authority to grant the remedy sought).



Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this \_\_\_ day of October, 2014, by electronic transmission or U.S. mail, postage prepaid, upon the persons listed below.

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\_\_\_\_\_  
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**Commission of Ohio Docketing Information System on**

**10/31/2014 9:45:49 AM**

**in**

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

Summary: Motion Motion to Dismiss by Duke Energy Ohio, Inc. electronically filed by Brenda S. Carnahan on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B.