

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC  
MEMORANDUM CONTRA APPLICATION FOR REHEARING OF THE  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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November 19, 2014

Attorney for Direct Energy Services, LLC  
and Direct Energy Business, LLC

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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") timely submitted both initial comments and reply comments in this docket. On October 15, 2014 the Commission issued its Finding and Order and adopted modified rules for Chapter 4901:1-25 of the Ohio Administrative Code ("O.A.C.")

On November 14, 2014, the Office of the Ohio Consumers' Counsel ("OCC") filed an Application for Rehearing of the Commission's October 15, 2014 Finding and Order and adopted rules. Specifically, OCC says the Commission erred when it decided that certain information supplied by competitive suppliers will automatically be held confidential upon submission to the Commission. The Commission should deny OCC's Application for Rehearing.

First, as a threshold matter, OCC raises nothing new for the Commission's consideration. OCC took this same advocacy position in its comments and Direct Energy, FirstEnergy Solutions, and the FirstEnergy utility companies opposed its recommendation. Finding and

Order at 5-7. The Commission already rejected the very same arguments OCC makes in its Application for Rehearing and it should once again in its Entry on Rehearing in this case. For this reason alone the Commission should deny OCC's Application for Rehearing.

Additionally, the substantive reasons set forth in the comments of Direct Energy, FirstEnergy Solutions, and the FirstEnergy utility companies hold just as true now as when submitted in March 2014. The Commission struck the proper balance between confidentiality and public access in its Finding and Order and adopted rules. If a party truly wants the information they can file a request for disclosure and the process noted by the Commission will follow. The information is not being locked up totally outside of the public's viewing.

Similarly, OCC's legal arguments are unsupported by the plain language of the statutes or any case law relevant to the situation at bar. The Commission's decision correctly recognizes this information properly and automatically qualifies as confidential information under Ohio's public records law and should be protected without having to go through the motion for protective order process. Such a process would constitute a needless use of all stakeholders' time and energy; the commercial value of the information to competitors is readily apparent. Identifying a CRES supplier's market share and linking it to a particular supplier is the epitome of competitively sensitive market information. The Commission has been able to successfully study and discuss the health, strength and vitality of the CRES market since 1999 without disclosing this confidential information. OCC fails to provide compelling reasons to reverse the Commission's long-established practice to protect this information.

Direct Energy respectfully requests the Commission deny OCC's Application for Rehearing.

Respectfully submitted,

/s/ Joseph M. Clark

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## **CERTIFICATE OF SERVICE**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties. In addition, I hereby certify that a service copy of the foregoing *Direct Energy Services, LLC and Direct Energy Business, LLC Memorandum Contra Application for Rehearing of the Office of the Ohio Consumers' Counsel* will be sent via electronic mail to the e-mail addresses below on this 19<sup>th</sup> day of November, 2014.

/s/ Joseph M. Clark

Joseph M. Clark

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Summary: Memorandum Contra Application for Rehearing electronically filed by JOSEPH CLARK on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC