

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc. for Authority to Establish)	
a Standard Service Offer Pursuant to R.C.)	Case No. 14-841-EL-SSO
4928.143, in the Form of an Electric)	
Security Plan.)	

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its)	Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O. No 20.)	

**REPLY BRIEF OF
DIRECT ENERGY SERVICES, LLC AND
DIRECT ENERGY BUSINESS, LLC**

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I. INTRODUCTION

Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”) files its Reply Brief in this proceeding. As explained below, the Public Utilities Commission of Ohio (“Commission”) should:

1. Reject Duke Energy Ohio’s attempts to mandate use of its POR program and its attempts to restrict bill access for non-commodity charges for CRES providers. Instead, for good policy reasons and to ensure equal footing with Duke Energy Ohio and its affiliate, the Commission should ensure customers and CRES providers can make full use of Duke Energy Ohio’s bill.
2. Reject Rider PSR and the potential for any future power purchase agreements outside of OVEC as Rider PSR forces all customers onto a monthly variable rate and to wear full market risks.
3. In the alternative the Commission should require Duke Energy Ohio to use its share of the OVEC output to serve PIPP customers. The arguments put forth by ODSA should be rejected.

Additionally, Direct Energy notes it agrees with and supports the Reply Brief filed by the Retail Energy Supply Association (“RESA”).

II. ARGUMENT

A. The Commission should reject Duke Energy Ohio’s attempts to mandate use of its POR program and its attempts to restrict bill access for non-commodity charges for CRES providers.

As Direct Energy explained in its Initial Brief, Duke Energy Ohio requests changes to its current billing and purchase of receivables (“POR”) programs that should be rejected by the Commission. Duke Energy Ohio’s Initial Brief contains no additional details than what Duke Energy Ohio provided in its Application and accompanying direct testimony. In its Initial Brief

Direct Energy and the Retail Energy Supply Association (“RESA”) debunked the supporting reasons put forth by Duke Energy Ohio in its Application and testimony and then parroted in its brief. Specifically, the Commission should reject these changes. Duke Energy Ohio offers very few, non-convincing reasons to make these vaguely-worded changes and its reasons basically boil down to a simple preference by Duke Energy Ohio that the changes be made rather than actual problems or concerns that need addressed. Moreover, the practical effect of the changes will be to prohibit a competitive retail electric supply (“CRES”) provider from offering other products and services (in addition to commodity) and giving the customer the convenience of using the Duke consolidated bill to pay for those products and services at the very time when these new types of products and services are now enhanced by the new smart meters installed in customer homes and premises.

The Commission should instead adopt the measures suggested by RESA and Direct Energy. The Commission should require Duke Energy Ohio to permit CRES providers to use bill-ready utility consolidated billing (“UCB”) without mandatory POR, just as CRES providers do today.¹ The Commission should also direct Duke Energy Ohio to allow CRES providers to put non-commodity products and services on their utility bills, just as Duke Energy Ohio does for itself and its affiliate today.²

Should the Commission grant Duke Energy Ohio’s request to amend its tariff, rather than using the undefined term “commodity only” proposed by Duke Energy Ohio, the restriction should be “competitive retail electric service” as defined in statute or “electric generation service” as used in Rule 4901:1-10-33, Ohio Administrative Code.³ Further, should the

¹ RESA Exhibit 1 at 12.

² *Id*; See also IGS Exhibit 10 at 9 and Direct Energy Initial Brief at 11.

³ RESA Exhibit 1 at 12.

Commission approve Duke Energy Ohio's request to limit POR to "commodity-only" service, it should direct Duke Energy Ohio to reprogram its billing system (to the extent the billing system is not already able) to accommodate a CRES provider participating in the POR program for commodity-related charges and to exclude non-commodity charges placed on the bill from the POR program.⁴ It appears Duke Energy Ohio already has the ability to bill for and collect non-commodity charges and exclude those charges from its POR program.⁵ This option would allow a CRES provider to continue to expand service offerings to customers but not expand Duke Energy Ohio's POR beyond generation service.⁶

B. The Commission should reject Rider PSR in its entirety. In the alternative, the Commission should direct Duke Energy Ohio to use its entitlement of the OVEC output to serve PIPP customers.

As a threshold matter, Direct Energy completely opposes Rider PSR. All the other Parties oppose Rider PSR as proposed by Duke Energy Ohio. Direct Energy will not rehash the good legal and policy reasons to reject Rider PSR, but simply notes it agrees with the arguments put forth by the other Parties in their Initial Briefs opposing Rider PSR.

However, if the Commission is inclined to grant a lifeline for Duke Energy Ohio's share of the Ohio Valley Electric Corporation ("OVEC") generation in the form of Rider PSR, the Commission should adopt Direct Energy's suggestion to use the OVEC output to serve percentage of income payment plan ("PIPP") customers.⁷ As explained by Witness Ringenbach, the Commission could use the power from OVEC to ensure that the power paid for is actually used by the customers who pay for it and that customers who cannot shop receive the power.⁸

⁴ RESA Exhibit 1 at 12.

⁵ IGS Exhibit 10 at 9.

⁶ RESA Exhibit 1 at 12.

⁷ Direct Energy Exhibit 1 at 9-12.

⁸ Direct Energy Exhibit 1 at 9.

The portion of the power from Duke Energy Ohio's share of the OVEC output could be priced: (1) as Duke Energy Ohio proposed in this case, using the cost of the power that Duke Energy Ohio proposes to be the benchmark for PSR; (2) at the price of the SSO auction; or (3) set at a fixed price based on Duke Energy Ohio's anticipated market conditions (which would essentially be a revenue guarantee as a true power purchase agreement for PIPP load).⁹ Whether PIPP customers would pay more than standard service offer ("SSO") customers is unknown because we do not know what the results of future SSO auctions will yield.¹⁰ Regardless, Direct Energy demonstrated the alternative mechanism proposed by Direct Energy benefits PIPP customers, CRES customers and SSO customers.

The Ohio Development Services Agency ("ODSA") filed an Initial Brief opposing Direct Energy's recommendation. ODSA's brief is wrong on the law and public policy for the reasons described below but also appears to misunderstand Direct Energy's proposal.

1. ODSA misinterprets Ohio law – Direct Energy's proposal is lawful and consistent with Ohio's energy policy.

ODSA first suggests that Direct Energy's proposal is unlawful because it eliminates ODSA's ability to aggregate PIPP customers in violation of Section 4928.54, Revised Code. As explained by Ms. Ringenbach¹¹ and Direct Energy in its Initial Brief,¹² consistent with Commission precedent,¹³ the Commission's decision to procure PIPP load in this manner would

⁹ Direct Energy Exhibit 1 at 11.

¹⁰ Direct Energy Exhibit 1.

¹¹ Tr. Vol. IX at 2664-2665.

¹² Direct Energy Initial Brief at 15.

¹³ *In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 56 (July 18, 2012) and Second Entry on Rehearing at 28 (January 30, 2013). See also *In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order at 33 (August 25, 2010).

only apply until ODSA exercised its statutory right to aggregate PIPP customer load for generation service. The same would also be true, as Duke Energy Ohio acknowledges in its Initial Brief, for Duke Energy Ohio's proposal to price PIPP customers through the SSO auctions.¹⁴ Once ODSA's procurement becomes effective then the Rider PSR mechanism would go away and Duke Energy Ohio would be free to sell its entire share of the OVEC output into the markets and reap the gains or losses from those sales. ODSA retains control in this situation and can exercise its statutory rights, overriding the Commission's decision, whenever it decides to exercise those statutory rights.

ODSA next suggests Direct Energy's proposal is unlawful inasmuch as it violates the statutory directives in Section 4928.58 and 4928.02, Revised Code that energy services are provided to low-income customers in an affordable manner.¹⁵ Specifically, ODSA states increases in PIPP customer rates violate both of these code sections.¹⁶ ODSA is wrong on both of these counts too.

As a threshold matter, Commission approval of Direct Energy's proposal would not violate Section 4928.58, Revised Code. That section describes the "purpose" of the Ohio Public Benefits Advisory Board ("PBAB") as "ensuring that energy services be provided to low-income consumers in this state in an affordable manner consistent with the policy specified in section [4928.02](#) of the Revised Code." PBAB ensures that energy services are provided to low-income customers in an affordable manner by (1) advising the director in the administration of the universal service fund and the low-income customer assistance programs, including advising the

¹⁴ Duke Energy Ohio Initial Brief at 35. ("Instead, beginning on June 1, 2015, the load comprising PIPP customers will be combined with the non-PIPP load and will be supplied through the SSO auction process, subject to the statutory right of the Ohio Development Services Agency to aggregate the PIPP load and solicit generation supply from CRES providers.") (emphasis added).

¹⁵ ODSA Initial Brief at 5-7.

¹⁶ ODSA Initial Brief at 7.

director on the director's recommendation to the commission regarding the appropriate level of the universal service rider; and (2) advising the director on the administration of the advanced energy program and the advanced energy fund under sections [4928.61](#) to [4928.63](#) of the Revised Code.¹⁷ There is nothing in this statute that deals with the price charged to PIPP customers. Section 4928.58, Revised Code, only deals with whether ODSA and ODSA's actions in administering the PIPP program for electric consumers are in compliance with the statute. The statute has no bearing on the Commission in this case. The Commission is not bound by this code section and the Commission's decisions cannot violate a code section to which it is not bound or authorized.

Additionally, the Direct Energy proposal would not violate Section 4928.02, Revised Code. Direct Energy's proposal would advance the policies of Section 4928.02, Revised Code. Specifically, Direct Energy's proposal would, among other things, ensure the availability of adequate and reasonably priced retail electric service¹⁸ to PIPP customers and protect at-risk populations.¹⁹ And, as Witness Ringenbach explained, the Direct Energy proposal is more consistent with Senate Bill 3 and Senate Bill 221 than the Rider PSR proposal.²⁰

Direct Energy's proposal is not indefensible. Just the opposite is true. If the Commission believes that the proposed Rider PSR is such a great long-term deal for customers the Commission should be willing to provide this great deal to the low-income customers on the PIPP program who need low priced power.²¹ Further, if it is true that Rider PSR will actually stabilize customer rates as Duke Energy Ohio claims it will, the long-term effect is to stabilize

¹⁷ Section 4928.58(E), Revised Code.

¹⁸ Section 4928.02(A), Revised Code.

¹⁹ Section 4928.02(L), Revised Code.

²⁰ Direct Energy Exhibit 1 at 10-11.

²¹ Direct Energy Exhibit 1 at 11-12.

rates for those low-income customers,²² thereby helping them control their arrearages, especially when they leave the PIPP program. This alleged price stability provides customers who are prohibited from shopping the same price stability they would otherwise be able to choose themselves from a CRES provider if PIPP customers were eligible to shop.²³

Direct Energy believes none of the assumptions/beliefs in the previous paragraph are correct or will come true. Direct Energy opposes Rider PSR entirely for all customers (including PIPP customers) and welcomes ODSA joining the party opposing Rider PSR.²⁴ However, Duke Energy Ohio claims this is a good deal for consumers, that it will stabilize rates, and provides an alleged hedge in the market. The Commission should give these benefits to the neediest customers if it does in fact believe Duke Energy Ohio's arguments.

2. ODSA's factual arguments are also unsupported.

ODSA appears to misunderstand Direct Energy's proposal in several ways that should be explained.

First, ODSA states "However, considering Direct Energy believes that Rider PSR will make its customers "pay twice" for electricity, it can be assumed that Direct Energy believes that the rider also will increase the price to provide electric supply to PIPP customers."²⁵ ODSA also states "Direct Energy admits that the intent of its recommendation is to shift the cost of the Duke's entitlement to OVEC power to PIPP customers."²⁶

Direct Energy believes Rider PSR will shift the cost of the Duke OVEC entitlement and increase the price for **all** customers, not just PIPP customers. Indeed, everybody will "pay

²² Direct Energy Exhibit 1 at 11-12.

²³ Direct Energy Exhibit 1 at 11.

²⁴ ODSA Initial Brief at 7.

²⁵ ODSA Initial Brief at 6.

²⁶ ODSA Initial Brief at 6.

twice” under the proposal – SSO customers (including PIPP customers) and shopping customers. OVEC power will not be put on the electric grid specifically to supply Ohio customers. Duke Energy Ohio will sell the power into the PJM markets at large and charge or credit all customers based upon revenue deficiency or overages (respectively, after Duke is made whole plus a profit) from selling that power to others in PJM. SSO customers, including PIPP customers, are served by bidders into the SSO auctions. The OVEC power at issue here will only be sold into the general PJM markets so PIPP customers will pay the SSO price plus Rider PSR just like SSO customers and shopping customers.

Under the Direct Energy approach, PIPP customers only pay once for the OVEC power, which would be put on the power grid for PIPP customers²⁷ and priced in a manner determined by the Commission. ODSA could participate (whether it is through this docket or in another docket) in the Commission’s decision on how to price those customers. The excess power output from OVEC not used to serve PIPP customers will be sold into the PJM markets and Duke Energy Ohio would reap the profits or losses from those transactions.²⁸ PIPP customers would get the benefits from the OVEC power and paying twice through Rider RRS goes away for all customers, including PIPP customers.

Second, ODSA attempts to refute Direct Energy’s advocacy position that the Commission could use the PIPP load to provide a fixed rate (price) to PIPP customers. ODSA states that PIPP customers already have the benefit of a fixed price contract because they pay a percentage of their income for electric supply.²⁹ PIPP customers have a fixed amount they pay each month, but the per kWh price for PIPP customers under Duke Energy Ohio’s plan would be

²⁷ Direct Energy Exhibit 1 at 9.

²⁸ Direct Energy Exhibit 1 at 10.

²⁹ ODSA Initial Brief at 7.

a monthly variable rate as the SSO price varies monthly.³⁰ The Direct Energy proposal (if the Commission adopts a fixed price for PIPP customers) would provide the rate stability of a fixed price contract and help PIPP customers manage arrearages in times of higher, variable SSO prices.

Finally, ODSA footnotes its belief that Direct Energy’s proposal is “too little – too late, considering that Duke has bid the capacity associated with its OVEC entitlement into the PJM base residual auction for the term of the ESP. Thus, Duke would be unable to directly serve PIPP customers during that period.”³¹ Direct Energy suspects Duke Energy Ohio will take a similar position.³² Even if this is true, Duke Energy Ohio asks for a term for Rider PSR (for the OVEC power) beyond the term of this ESP³³ through 2040. Duke Energy Ohio asks the Commission, in this case, to make a decision with impacts that will last for 25 years.³⁴ It’s now or never so the Commission should make the decision now and, assuming the power is spoken for until 2018, should order the Direct Energy proposal to commence immediately after the last base residual auction to which the power has already been promised. Direct Energy’s proposal is not “too little- too late” but rather now is the only time for the Commission to make this long-term determination to adopt Direct Energy’s proposal.

³⁰ Duke Energy Ohio proposed including PIPP customers in the SSO auction and PIPP customers paying the same amount as SSO customers during the term of this ESP. It is also worth pointing out again that adoption of Rider PSR will turn all contracts, even fixed rate contracts, into monthly variable rates with customers wearing the full market risk of the OVEC plants.

³¹ ODSA Initial Brief at 7, FN 23.

³² Tr. Vol. IX at 2665-2666.

³³ Duke Energy Ohio Exhibit 6 at 13 (Direct Testimony of William Don Wathen, Jr.).

³⁴ RESA Initial Brief at 7.

III. CONCLUSION

The Commission should reject Duke Energy Ohio's proposed changes to its UCB and POR programs and order Duke Energy Ohio to bill for non-commodity products and services for CRES providers. Further, Rider PSR will force customers onto an unavoidable monthly variable rate. Customers on fixed rate pricing choose fixed rates specifically to avoid market risks which can be good or bad. Rider PSR will undo the protections of a fixed rate. The Commission should reject Rider PSR to protect customers against market risks, or in the alternative order OVEC generation be used to supply PIPP customers. And finally, the Commission should reject the proposed provision to allow Duke Energy Ohio to unilaterally terminate the ESP at the end of the second year of the term of the ESP.

Respectfully Submitted,

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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 *Reply Brief of Direct Energy Services, LLC and Direct Energy Business, LLC* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 29th day of December 2014 via e-mail.

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