

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Ohio Power)	
Company for Authority to Establish a)	Case No. 13-2385-EL-SSO
Standard Service Offer Pursuant to)	
§4928.143, Revised Code, in the Form of an)	
Electric Security Plan)	

In the Matter of the Application of Ohio)	Case No. 13-2386-EL-AAM
Power Company for Approval of Certain)	
Accounting Authority)	

**MEMORANDUM CONTRA OF
DIRECT ENERGY SERVICES, LLC AND
DIRECT ENERGY BUSINESS, LLC**

Joseph M. Clark (Counsel of Record)
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
Tel. (614) 220-4369 Ext 232
Fax (614) 220-4674
joseph.clark@directenergy.com
(Willing to accept e-mail service)

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

I. INTRODUCTION

On June 29, 2015 Ohio Power Company (“AEP-Ohio”) and the Ohio Manufacturers’ Association Energy Group (“OMAEG”) filed Applications for Rehearing of the Public Utilities Commission of Ohio’s (“Commission”) Second Entry on Rehearing in AEP-Ohio’s electric security plan (“ESP”) case. Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”) hereby files its Memorandum Contra AEP-Ohio’s and OMAEG’s respective Applications for Rehearing in this proceeding. Direct Energy’s decision to not address any aspect of AEP-Ohio’s or OMAEG’s Applications for Rehearing or any of the other Parties’ Applications for Rehearing should not be construed as agreement with those respective Applications for Rehearing. Direct Energy also supports and agrees with the Memorandum Contra filed by the Retail Energy Supply Association (“RESA”) in this docket.

In its Opinion and Order, the Commission approved the concept of a purchase of receivables (“POR”) program for AEP-Ohio and ordered that several items be worked out in the market development working group (“MDWG”). However, the Commission did issue five (5) directives related to the POR program, including that : (1) receivables must be purchased at a single discount rate that applies to all CRES providers; (2) only commodity-related charges may be included in the POR program; (3) participation in the POR program by competitive retail electric service (“CRES”) providers that elect consolidated billing must not be mandatory; (4) a detailed implementation plan should be filed with the MDWG, with a proposal subsequently filed for the Commission’s consideration; and (5) AEP is authorized to establish a bad debt rider (“BDR”) initially set at zero.¹

¹ Opinion and Order at XX.

In its Second Entry on Rehearing, the Commission affirmed that a POR program should be approved for AEP-Ohio.² The Commission also confirmed that only-commodity related charges may be included in AEP-Ohio's POR program, clarifying that commodity-related charges means charges that are directly tied to the actual cost of generation and does not include early termination fees, which are not a necessary component of generation service.³ The Commission also reaffirmed that AEP-Ohio cannot compel a CRES provider to participate in its POR program, observing that CRES providers should be able to utilize AEP-Ohio's consolidated billing without having to participate in the POR program.⁴

II. ARGUMENT

A. The Commission should deny, in part, AEP-Ohio's Application for Rehearing regarding establishment of a POR program.

As a threshold matter, AEP-Ohio reads the Commission's Opinion and Order and Second Entry on Rehearing as a discretionary program it may implement if it chooses.⁵ AEP-Ohio evidently interprets the Commission's Opinion and Order directing "that a POR program should be approved" and verbage whereby the Commission "authorize[s]" AEP-Ohio to establish a POR program, as well as the Second Entry on Rehearing confirming "a POR program should be approved for AEP-Ohio," as an optional program.⁶ The Opinion and Order and Second Entry on Rehearing never describe the authorized POR program as optional or voluntary and the intent of the Commission to require AEP-Ohio to implement a POR program is evident. The Commission should make clear that AEP-Ohio must implement a POR program under whatever conditions the Commission sets.

² (EOR at 35).

³ (EOR at 37).

⁴ (EOR at XX).

⁵ AEP-Ohio Application for Rehearing at 18 ("AEP-Ohio would be willing to implement"; "implement this voluntary program"; "viable option it is willing to implement"; "ultimately it is AEP Ohio that must decide if it can and will offer this program.").

⁶ Opinion and Order at 80; Second Entry on Rehearing at 35.

Next, AEP-Ohio asks the Commission to “leave open the option for change to the direction provided in its findings” as a result of what may be recommended by the MDWG subgroup working on the implementation details of AEP-Ohio’s POR program.⁷ AEP-Ohio notes it is not attempting to seek its initial plan with no discount rate and recovery of all costs through a bad debt rider for all AEP-Ohio’s services, but observes the process of starting from scratch and developing a new program based on a discount rate may create new challenges that requires flexibility beyond that ordered in the Orders to date.⁸ Next AEP-Ohio asks for the flexibility for the subgroup to “raise whatever issues necessary that increases the chance that a plan can be developed that AEP-Ohio is willing to implement” and a clarification that the MDWG subgroup is free to develop a discount rate program that AEP-Ohio is willing to implement.⁹

Direct Energy is not opposed to providing the POR working group some flexibility as it relates to a mandatory POR program for AEP-Ohio. However, such flexibility should not be unfettered. Specifically, the Opinion and Order acknowledged Direct Energy’s arguments that AEP-Ohio’s POR proposal should be modified to either allow for continued billing and collection for non-POR items (outside of the POR/collections process) even if a CRES provider participates in POR or AEP-Ohio to allow CRES providers to continue to participate in utility consolidated billing and *not* participate in its POR program.¹⁰ This optionality ensures the utility consolidated billing functionality currently available to CRES providers related to non-commodity products and services is not taken away from CRES providers.

⁷ AEP-Ohio Application for Rehearing at 18.

⁸ AEP-Ohio Application for Rehearing at 18.

⁹ AEP-Ohio Application for Rehearing at 19.

¹⁰ Opinion and Order at 79. Direct Energy based its position on the fact that AEP-Ohio’s POR proposal would have eliminated the current option for shopping customers to be billed by AEP-Ohio for additional products and services outside of their ordinary commodity service as well as the preference for customers to receive a single bill for commodity with the other products and services. Opinion and Order at 79.

The Commission chose the latter option in its Opinion and Order.¹¹ The Commission should clarify that the MDWG can choose a program that selects the former rather than the latter, but it must choose one of the options. Choosing neither should not be permitted. The valid legal and policy reasons underlying the Commission's decision still exist and there is no reason to reverse course. Either option accomplishes these objectives. Direct Energy would support either option but cannot support flexibility that would allow the MDWG subgroup to eliminate this aspect of the POR program, as ordered in the Opinion and Order and affirmed in the Second Entry on Rehearing.

- B. If the Commission grants OMAEG's Application for Rehearing regarding alleged double collection of non-bypassable transmission costs, the Commission should ensure all possible causes of the alleged double recovery are reviewed.

In its Application for Rehearing, OMAEG alleges it was unreasonable for the Commission to dismiss requests for rehearing concerning double billing for transmission-related expenses inasmuch as customer are seeing increases in transmission charges.¹² OMAEG alleges that, "in practice, it appears that providers have not adequately ensured against double recovery of transmission-related costs for a number of customers as customers have experienced increases in transmission-related costs due to the transition."¹³ OMAEG further observes that it "appears that double billing is occurring or there is some other unanticipated consequence associated with the transition."¹⁴ Finally, OMAEG asks the Commission to direct "AEP, CRES providers, and Staff to implement, within 30 days of the issuance of the EOR addressing the applications submitted today, a process for determining which provider, whether AEP or the CRES, will charge certain affected customers the transmission-related charges at issue" and for an order that

¹¹ Opinion and Order at 80.

¹² OMAEG Application for Rehearing at 13.

¹³ OMAEG Application for Rehearing at 14.

¹⁴ OMAEG Application for Rehearing at 14.

AEP, CRES, and Staff work together to ensure “no customer is charged more for transmission-related expenses than what they otherwise would have been charged under the prior ESP and established TCRR rider.”¹⁵

Direct Energy customers have raised similar concerns to Direct Energy. Direct Energy continues to support the Commission Order approving the Basic Transmission Cost Rider (“BTCR”) and the charges recovered through that rider. However, Direct Energy also wants to ensure the correct methodology is applied to the BTCR and there is no double recovery. Direct Energy is not opposed to a process to ensure customers are not double-billed for the movement of certain transmission-related costs to the BTCR, but the Commission should ensure all possible causes of the unexpected increases are explored. Direct Energy’s investigations revealed the cause of this issue may not be double billing by CRES providers. Rather the cause could also be the rate design of the BTCR including both a demand and energy charge or could be a large increase in transmission-related costs in July 2014 that perhaps was not captured in a 2014 transmission cost recovery rider (“TCRR”) update and therefore the under-recovery was added into the BTCR effective June 1, 2015. The Commission should ensure all causes of the possible double collection are objectively explored and any group studying the possible double collection should not start from the premise the problem lies with CRES providers failing to remove these costs from their prices.

III. CONCLUSION

Direct Energy asks the Commission to only grant the Applications for Rehearing under the conditions described within this Memorandum Contra.

¹⁵ OMAEG Application for Rehearing at 14-15.

Respectfully Submitted,

/s/ Joseph M. Clark

Joseph M. Clark

Direct Energy

21 East State Street, 19th Floor

Columbus, Ohio 43215

Tel. (614) 220-4369 Ext 232

Fax (614) 220-4674

joseph.clark@directenergy.com

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

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 *Memorandum Contra of Direct Energy Services and Direct Energy Business* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 9th day of July 2015 via e-mail, except those specifically designated as being served via U.S. Mail.

/s/ Joseph M. Clark

Joseph M. Clark

Ohio Power Company (stnourse@aep.com, mjsatterwhite@aep.com, and dconway@porterwright.com)

OMA Energy Group (bojko@carpenterlipps.com and hussey@carpenterlipps.com)

Retail Energy Supply Association, Constellation New Energy, Inc, and Exelon Generating Company, LLC (glpetrucci@vorys.com and mhpetricoff@vorys.com)

FirstEnergy Solutions Corp (haydenm@firstenergycorp.com, scasto@firstenergycorp.com, and jmcdermott@firstenergycorp.com)

Ohio Partners for Affordable Energy (drinebolt@ohiopartners.org and cmooney@ohiopartners.org)

Industrial Energy Users-Ohio (mpritchard@mwncmh.com, fdarr@mwncmh.com, sam@mwncmh.com)

Duke Energy Ohio, Inc. (Rocco.D'Ascenzo@duke-energy.com)

Ohio Consumers' Counsel (maureen.grady@occ.ohio.gov, and joseph.serio@occ.ohio.gov)

The Ohio Hospital Association (ricks@ohanet.org, tobrien@bricker.com, and dborchers@bricker.com)

Duke Energy Retail Sales and Duke Energy Commercial Asset Management (philip.sineneng@thompsonhine.com)

Border Energy (stephanie.chmiel@thompsonhine.com)

Interstate Gas Supply, Inc (whitt@whitt-sturtevant.com, and campbell@whitt-sturtevant.com)

The Dayton Power and Light Company (judi.sobecki@aes.com)

Ohio Energy Group (dboehm@bkllawfirm.com, mkurtz@bkllawfirm.com,
kboehm@bkllawfirm.com, and jkylarcohn@bkllawfirm.com)

Environmental Defense Fund (jfinnigan@edf.org)

Ohio Environmental Council and Environmental Defense Fund (trent@theoec.org)

Kroger Company (myurick@taftlaw.com)

Enernoc (gpoulous@enernoc.com)

Environmental Law and Policy Center (rkelter@elpc.org)

Natural Resources Defense Council (swilliams@nrdc.org)

Wal-Mart/Sam's East (dwilliamson@spilmanlaw.com and tshadrick@spilmanlaw.com)

Appalachian Peace and Justice Network (msmalz@ohiopovertylaw.org)

Dominion Energy Solutions (barthroyer@aol.com)

Paulding Wind Farm (tsiwo@bricker.com)

Energy Professionals of Ohio (schmidt@sppgrp.com)

PUCO Staff (katie.johnson@puc.state.oh.us and werner.margard@puc.state.oh.us)

Attorney Examiners (greta.see@puc.state.oh.us and sarah.parrot@puc.state.oh.us)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/9/2015 8:27:29 AM

in

Case No(s). 13-2385-EL-SSO, 13-2386-EL-AAM

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