



December 28, 2015

Barcy F. McNeal, Secretary  
Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street, 11th Floor  
Columbus, Ohio 43215

Re: Objection to Notice of Deposition – Case Nos. 14-1693-EL-RDR, *et al.*

Dear Secretary McNeal:

On December 14, 2015, following a hearing in the above-captioned proceeding Direct Energy Business, LLC and Direct Energy Services, LLC (jointly, “Direct Energy”) and several other parties submitted a Stipulation and Recommendation (“Stipulation”) as part of a settlement package deal. On that same day, Ohio Power Company (“Ohio Power”) submitted the testimony of William Allen describing and supporting the Stipulation. No other witness has submitted testimony to support the Stipulation.

While Ohio Power has agreed to make Mr. Allen available for deposition, on December 23, 2015, the Office of the Ohio Consumers’ Counsel (“OCC”) served a notice of deposition on Direct Energy and other parties (the Sierra Club and IGS Energy) pursuant to Ohio Administrative Code (“OAC”) 4901-1-21(B). The notice indicates that OCC requests that Direct Energy present employees on December 29, 2015 who have knowledge and expertise regarding the following three issues:

- Ohio Power proposal to enter into an affiliate power purchase agreement for inclusion in the power purchase agreement rider;
- the Stipulation filed on December 15, 2015;
- Direct Energy’s position regarding the Joint Stipulation.

OAC 4901-1-21(B) states “[a]ny party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to the deponent, to all parties, and to the commission. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient for identification.” As discussed below, Direct Energy objects to OCC’s request that Direct Energy present a witness or witnesses for deposition.



This request is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. The request may also call for confidential settlement communications and information subject to attorney client privilege and work product doctrine. Direct Energy does not intend to present expert testimony in support of the Stipulation. Mr. Allen has already submitted prefiled testimony in that respect and there is thus no need to duplicate that effort. Further, Direct Energy's position regarding the Stipulation is self-evident from the document itself. Direct Energy is working to complete responses to OCC's discovery on the Stipulation and intends to submit such responses today.

As a final matter, Direct Energy believes that this request by OCC runs counter to the theory of settlement in which parties seek to reach a result that allows them to avoid further litigation expenses and thus views OCC's request as an affront to the settlement process.

Please feel free to contact me if you have any questions.

Respectfully submitted,

/s/ Jennifer L. Spinosi

---

Jennifer L. Spinosi

Direct Energy

21 E. State St.

Suite 1950

Columbus, OH 43215

614-506-8594

[Jennifer.Spinosi@DirectEnergy.com](mailto:Jennifer.Spinosi@DirectEnergy.com)

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

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/28/2015 4:55:11 PM**

**in**

**Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM**

Summary: Correspondence Letter Objecting to Notice of Deposition electronically filed by Ms. Jennifer L. Spinosi on behalf of Direct Energy Business, LLC and Direct Energy Services, LLC