

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking	)	
Approval of Ohio Power Company's	)	Case No. 14-1693-EL-RDR
Proposal to Enter into an Affiliate Power	)	
Purchase Agreement for Inclusion in the	)	
Power Purchase Agreement Rider.	)	

In the Matter of the Application of Ohio	)	
Power Company for Approval of Certain	)	Case No. 14-1694-EL-AAM
Accounting Authority.	)	

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**MOTION TO STRIKE CORRESPONDENCE FILED BY DIRECT ENERGY  
SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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On December 28, 2015, Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, "Direct Energy") filed "correspondence" in this case objecting "to OCC's request that Direct Energy present a witness or witnesses for deposition." Direct Energy does not dispute that it is a party to this case, a Signatory Party to the Stipulation, and that it was properly noticed for the deposition. Instead, it asserts meritless objections without citing to any authority.

The Office of the Ohio Consumers' Counsel ("OCC") hereby moves to strike Direct Energy's correspondence from the docket. The proper procedural method for Direct Energy to raise its objections is objecting to specific questions during the deposition or filing a motion for a protective order under Ohio Admin. Code 4901-1-24. A motion would then provide a process for OCC to respond, for the Direct Energy to reply, and for the Commission to resolve this issue on the record. By not filing such a motion, it is apparent that Direct Energy acknowledges that such a motion would be

unsuccessful. Direct Energy's effort to supplant the Civil Rules and the Commission's Rules by filing a correspondence instead of a motion, thus denying OCC process and discovery, should not be tolerated. Thus, the correspondence should be stricken.

Further grounds supporting this request are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE MOTION TO STRIKE**

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**I. INTRODUCTION**

Ohio Admin. Code 4901-1-24 provides a mechanism for a person from whom discovery is sought to obtain an order that is necessary to protect a party or person from discovery. That is a motion for a protective order. *See* Ohio Admin. Code 4901-1-24. Direct Energy did not follow the governing rules and file a motion. Instead, it is attempting to short-circuit the process and deny OCC discovery by filing a correspondence. This is an affront to the Commission's procedural rules and OCC respectfully requests that the Commission strike the correspondence from the docket.

**II. ARGUMENT**

Ohio Admin. Code 4901-1-24 provides a clear procedure for parties seeking protection from discovery – a motion for a protective order. Ohio Rule of Civil

Procedure 7 provides that any “application to the court for an order shall be by motion.”<sup>1</sup>

The rules provide an established procedural method for a party to seek relief from the Commission, for the non-moving party to respond, and for the motion to be decided after adequate adversarial process.<sup>2</sup> Direct Energy is ignoring this procedure.

Direct Energy has asserted meritless objections (as confirmed by the fact that it cites no authority to support them) to OCC’s proper and timely deposition notice. In the normal course of events, such objections would be raised in response to questions during the deposition or in a motion for a protective order. Direct Energy’s “correspondence” is an improper method for raising its objections.

There is no reason why Direct Energy cannot assert objections during the deposition or file a motion for a protective order. Nevertheless, Direct Energy must produce a witness for deposition.<sup>3</sup> At the deposition, Direct Energy may assert objections in response to specific questions, or file a motion for a protective order. Direct Energy’s December 28, 2015 “correspondence” should be stricken from the docket and the Commission should disregard its contents.

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<sup>1</sup> See also Ohio Admin. Code 4901-1-12. The Commission “look[s] to them [the Civil Rules] as persuasive authority.” *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer*, Case No. 14-1297-EL-SSO, Entry at 7 (July 22, 2015).

<sup>2</sup> See Ohio Admin. Code 4901-1-12.

<sup>3</sup> Of course, without an Order granting a motion for protective order after due process, OCC’s deposition notice to Direct Energy, a party to this case, compels Direct Energy to produce a witness or witnesses for the deposition as noticed. See Ohio Rule of Civil Procedure 30.

### III. CONCLUSION

For the reasons outlined above, OCC requests that the Commission strike Direct Energy's December 28, 2015 correspondence from the docket for this proceeding and disregard its contents.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike was served via electronic transmission to the persons listed below on this 29<sup>th</sup> day of December, 2015.

/s/ William J. Michael  
William J. Michael  
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Summary: Motion Motion to Strike Correspondence filed by Direct Energy Services, LLC and Direct Energy Business, LLC by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.