

1 So we quickly were able to cancel that,
2 retract it, contact the customer, and then in our
3 discussions with Duke they had agreed to provide
4 spreadsheet information in lieu of the EDI
5 transmitted information. So we were able to get that
6 information manually into the system and do a correct
7 interval bill for those months. I believe that was
8 for February and for March.

9 When I was back reviewing preparing for
10 this, I didn't see where we had interval data at all
11 for January. And I, initially I thought we did but I
12 didn't see it in the system anywhere. So I assume we
13 didn't get January. So January would have been
14 billed summary de-ag, February and on is actual
15 intervals based on spreadsheets.

16 **Q.** And so in terms of the timeline, SunCoke
17 is billed, they're dual billed but in terms of the
18 generation supplied they receive a bill from Direct
19 Energy based upon, initially based upon summary data.

20 **A.** Correct.

21 **Q.** And it's your belief, sir, that that
22 summary data was, you said reasonable?

23 **A.** It was reasonable, yeah.

24 **Q.** And the same was true with respect to
25 February 2013, the initial bill that went out was

1 based upon summary data.

2 **A.** Right. And I think those bills went out
3 late but they -- so I think we had trouble getting
4 the initial data. So I think the January bill went
5 out in March and the March bill probably went out in
6 April. But they were reasonable in the dollar
7 amount.

8 **Q.** And then the account is placed on hold
9 after you became involved in early May?

10 **A.** Right. I don't know if it was placed on
11 hold before then because I know they had some
12 questions about the billing data before I was
13 involved. When I was involved, I did instruct it to
14 be placed on hold because I wanted to make sure that
15 if we billed anything out to the customer, that it
16 was going to be at least reasonably correct. Didn't
17 want a wrong invoice going out to them.

18 So it was instructed to be placed on hold
19 and either it was taken off hold or someone overrode,
20 the invoice went out the door.

21 **Q.** And that was the invoice with the
22 cancel/rebill.

23 **A.** Right; cancelled out the summary usage for
24 January, February -- not January -- February, March
25 and April, and rebilled February and March with the

1 interval.

2 Q. And I believe you said that the product
3 that SunCoke was on beginning in I think January 4,
4 2013, was the first date that they became a Direct
5 Energy customer, but the product that they were on as
6 of that date required summary and interval data.

7 A. Interval I think would be the preferred.
8 We had interval data, that's the best because they
9 put hedges in place. The way the product was
10 designed they placed hedges for different time
11 periods on their energy. So if you have incorrect
12 interval data, it can skew their bill a little bit.
13 So actual interval was preferred. De-ag interval
14 would be a B choice. It doesn't work on just summary
15 alone.

16 Q. And so when Direct received the summary
17 data, they had to de-aggregate it.

18 A. Right.

19 Q. At that point was there a conversation
20 with Duke Energy Ohio about why summary data was
21 coming through and not interval data?

22 A. I think that was before my involvement. I
23 think Andy may have been addressing that issue before
24 I became involved on this.

25 Q. And, sir, through your conversations with

1 Mr. Fawcett at Duke Energy, those ultimately led to a
2 meeting or additional conversations with folks at
3 Duke Energy, correct?

4 A. Right. So I think first start off with
5 Danny, he had pulled somebody else into our emails, I
6 can't remember the gentleman's name. And then both
7 of those communications kind of went silent after we
8 had the invoice from Duke to SunCoke. Both of those
9 communications went silent and then I believe the
10 next communication I had with anyone from Duke may
11 have been at the June meeting in Cincinnati. I
12 believe that's the case.

13 Q. And, sir, in your testimony you refer to
14 metering errors. Do you need your testimony again?

15 A. Yes. No, I'm good.

16 Q. You don't need it?

17 A. No.

18 Q. And what are the metering errors to which
19 you are referring?

20 A. So when I call something a "metering
21 error," I'm taking into consideration the
22 meter-read-to-report process. So if the process is
23 to obtain -- is to garner the energy that was used
24 and then report it, I consider that to be the
25 meter-read process. So a break in that process would

1 be an error, whether it's in the grabbing of it or in
2 the reporting of it.

3 Sometimes meters need to be aggregated or
4 netted and I believe in this case there was some
5 netting that needed to go on. In some cases it's
6 grabbing all the pertinent meters. But I look at it
7 as two parts there; grabbing and reporting.

8 Q. Do you have any basis to believe that the
9 meters at SunCoke aren't functioning correctly?

10 A. No.

11 Q. Do you know if the same meters are in
12 place in SunCoke that were there in January and
13 February of 2013?

14 A. I don't know.

15 Q. Sir, on page 4, line 14 of your testimony,
16 you say that the purpose of your testimony is to
17 explain the metering errors made by Duke Energy. How
18 did Duke Energy create metering errors? Or erroneous
19 data?

20 A. It was in the reporting of the meters. So
21 when they obtained the meter information that was at
22 SunCoke and reported it, the reporting information
23 wasn't complete, it was missing a netting-out
24 component with the co-gen meter.

25 Q. And when did you discover that, sir?

1 **A.** That would have been, trying to think who
2 we were talking to. It would have been the following
3 year so this would have been in January of '14, maybe
4 February of '14, somewhere in early 2014 when SunCoke
5 had went onto a utility consolidated bill and on a
6 fixed price and our charges weren't making it onto
7 the utility bill.

8 So we contacted Duke and said would it be
9 a problem if our charges aren't being billed and the
10 gentleman that we talked to indicated that there were
11 problems, they had problems with large industrial
12 customers with co-gen meters because the netting did
13 not take place in the sense that there was a co-gen
14 meter and a consumption meter, and that netting to
15 get the actual usage wasn't taking place to apply to
16 our rate apparently on the consolidated bill.

17 So that led me to believe that was the
18 same problem that was occurring on the settlement
19 side was we were getting billed for consumption and
20 the generation piece was not being netted out.

21 **Q.** So it was not until approximately February
22 of 2014 that you understood or learned that the
23 netting with the co-gen meter wasn't happening.

24 **A.** Right. So up to that point I knew there
25 was a problem, I didn't know what was causing the

1 information that was being transmitted to PJM to be
2 incorrect. I didn't know if the -- if there was
3 something happening within Duke's systems that were
4 applying a scaler against the volumes, I didn't know
5 if it was grabbing another meter and adding it to
6 SunCoke's meter. All I knew is that it was incorrect
7 because our bill was incorrect.

8 Q. But you knew that information and would
9 you have shared that information with folks internal
10 to Direct Energy about the netting issue that you
11 discovered in February of 2014?

12 A. Yeah, there was more people involved in
13 that conversation. It was probably the person who
14 was running our EDI at that time, he was on that
15 call, Andy Vance may have been involved in that
16 discussion. I'm not sure if he was still in his
17 utility position or not. He's since moved into
18 another the role in the company.

19 So, yeah, at that point we felt pretty
20 comfortable that we had an idea what was driving that
21 load reporting issue.

22 (KENNELLY EXHIBIT 2 WAS MARKED.)

23 Q. And, Mr. Kennelly, I'm handing you what's
24 been marked as Exhibit 2 to your deposition, sir.
25 This is a collection of two emails, one that you

1 authored on June 10, 2013 --

2 A. Yes.

3 Q. -- to Mr. Schmidt, and then he responded
4 on that same day, correct?

5 A. Yes.

6 Q. This has been identified as confidential
7 and I would just note that we can arrange to somehow
8 seal the exhibits to your deposition as appropriate.
9 So if I should tread into what are confidential
10 territories, please let me know and we will sort of
11 table this exchange for a confidential portion of
12 your deposition, okay?

13 A. Okay.

14 Q. And I'm going to focus, sir, if I may, on
15 what would be the second paragraph in your email that
16 starts "In early May."

17 A. Okay.

18 Q. The second sentence in that paragraph,
19 sir, you indicate that you were -- why don't you read
20 the second sentence. Do you believe that to be
21 confidential? You don't need to read it out loud.

22 A. Is the sentence beginning with "After"?

23 Q. "After several discussions," yep.

24 A. I believe that's not confidential.

25 Q. Okay. So you indicate there that Direct

1 Energy was able to determine the cause of the
2 variance and load was related to faulty meter reads
3 on the part of Duke Energy Ohio, correct?

4 **A.** Correct.

5 **Q.** And is that this whole reading/reporting
6 process that you've just defined?

7 **A.** It's reading/reporting before we knew what
8 was causing it. Meaning we knew later that it was
9 the netting of the co-gen piece that was causing it.
10 This piece we could see that the load going to PJM is
11 not correct but we don't know what's causing it at
12 that point.

13 So we knew there was somehow a break in
14 that process and we were still -- this is still in
15 the relatively early stages and I think still trying
16 to gather what was causing it and weren't real sure
17 and at this point even the folks we had talked to at
18 Duke hadn't expressed any certainty as to what was
19 causing it.

20 **Q.** So here again when you say "faulty meter
21 reads," you don't mean simply a meter read.

22 **A.** Correct. I'm talking about the process
23 from gathering of the data to the reporting of the
24 data.

25 **Q.** And do you believe that's how the Ohio

1 Commission interprets the phrase "meter reads"?

2 MR. HULL: Objection. We have not
3 presented Mr. Kennelly as a witness with regard to
4 interpretation of the tariff. But you may proceed to
5 answer the question.

6 A. I don't know.

7 Q. And so if we could drop down, sir, to the
8 paragraph that has the bullet points in it.

9 A. Sure.

10 Q. Going into this meeting that happened with
11 Duke Energy representatives in the June 2013
12 timeframe, what was your understanding of PJM's
13 settlement process?

14 A. So the understanding of the settlement
15 process is we are billed by PJM for load that's
16 allocated to us based on how utilities report the
17 loads. So very generic understanding on my part
18 would have been volumes are transmitted from the
19 utility to PJM, PJM generates a load back --
20 generates a bill to us, we pay the bill.

21 Q. And you reference in this paragraph at the
22 bottom of page 1 of your Deposition Exhibit No. 2 the
23 60-day resettlement window?

24 A. Okay.

25 Q. And how did you come to learn about PJM's

1 60-day resettlement window.

2 **A.** I think it was in the meeting itself. I
3 think if I recall we discussed different ways to
4 resolve this issue and it was brought up that for
5 months that are still within 60 days, those could be
6 resettled via normal Settlement B process, which is
7 the 60-day resettlement.

8 So that was discussed and explained enough
9 in the meeting for me to understand it and maybe a
10 sidebar after the meeting with Andy may have further
11 elaborated on that process with me. But I think my
12 main understanding came out of that meeting.

13 **Q.** And did that 60-day resettlement happen
14 for the months identified in your email?

15 **A.** Yes.

16 **Q.** And then you indicate that January and
17 February would be resettled via the Settlement C
18 process, correct?

19 **A.** Correct.

20 **Q.** You indicate that you're not familiar with
21 that process, correct?

22 **A.** Correct.

23 **Q.** But you do appreciate that it was
24 complicated and time consuming.

25 **A.** Yes.

1 **Q.** And what caused you to form that
2 conclusion that Resettlement C is complicated and
3 time consuming?

4 **A.** Again, I think it was based on the
5 discussion that we had in the meeting it was clear
6 that other suppliers would need to be contacted and
7 there was more steps involved. So wasn't very
8 familiar with the details of how it works but enough
9 was gathered out of that meeting to know this isn't
10 as easy as the 60-day resettlement and that was going
11 to be handled separately.

12 **Q.** And was it -- did Direct -- did Duke
13 Energy Ohio to your knowledge, sir, initiate the
14 Settlement C process on behalf of Direct Energy?

15 **A.** I believe in September of that year it was
16 initiated, there was an email that went out to all
17 the suppliers.

18 **Q.** And what happened as a result of Duke
19 Energy Ohio's efforts to initiate resettlement on
20 behalf of Direct Energy?

21 **A.** Most of the suppliers did not respond.
22 Two suppliers consented, or maybe none of them
23 consented. I think maybe one had a question. Seven
24 disapproved.

25 So there was very little participation.

1 Most that did respond did not agree to it, one had a
2 question, and maybe nobody consented to it if I'm not
3 mistaken. It was not encouraging.

4 Q. Do you know whether Duke Energy Ohio can
5 compel load serving entities to engage in the
6 Settlement C process?

7 A. I'm not certain.

8 Q. Do you know whether Duke Energy Ohio's
9 certified supplier tariff as it currently exists and
10 as existed in 2013 allows Duke Energy Ohio to mandate
11 participation by load serving entities in
12 Settlement C?

13 A. I'm not certain.

14 Q. When were you informed of the responses
15 from the suppliers who had been contacted by Duke
16 Energy regarding the Settlement C process?

17 A. I believe it was either November or
18 December of 2013 Dana Adams had sent me an email.
19 For some reason I want to say December 2 but that may
20 have been a follow-up to that.

21 Q. And were there any further communications
22 between Direct Energy and Duke Energy regarding the
23 Settlement C process?

24 A. She had indicated numbers that were as far
25 as who hadn't responded, who did respond. I

1 commented that was disappointing and asked what were
2 the next steps. She indicated that she was
3 anticipating that I'd be disappointed in that
4 response and was reaching out to I believe it was the
5 legal team or maybe it was another group to find out
6 what the next steps would be. And I don't believe I
7 heard back from her on this -- on that matter again.

8 Q. Do you know if anyone at Direct Energy was
9 contacted about the Resettlement C process subsequent
10 to your exchanges with Ms. Adams in late 2013?

11 A. Contacted as one of the suppliers or
12 contacted as a party that was requesting the
13 resettlement?

14 Q. Contacted by Duke Energy Ohio.

15 A. Okay. Not that I'm aware of. But I could
16 be wrong.

17 (KENNELLY EXHIBIT 3 WAS MARKED.)

18 Q. I'd like to hand you what's been marked as
19 Kennelly Deposition Exhibit No. 3. This is a
20 complaint that Duke Energy filed with the Public
21 Utilities Commission of Ohio on July 22, 2014,
22 correct?

23 A. Correct.

24 Q. And, sir, I just had a question so that I
25 again understand the timeline here. So if you could

1 turn to paragraph 13 on page 6. This indicates that
2 "Direct raised this issue with Duke as soon as the
3 meter data from January 2013 became available in
4 February of 2013." Correct?

5 A. Are we talking about billing data or
6 settlement data in this case?

7 Q. It's not my complaint, so you reference
8 there what Direct Energy references in the complaint
9 is meter data.

10 A. Okay.

11 MR. HULL: So what is the question for
12 Mr. Kennelly?

13 Q. I think we just read I pointed him to the
14 first sentence in paragraph 13, and you see that
15 reference there, correct?

16 A. Okay.

17 Q. To your knowledge, sir, when did Direct
18 Energy first contact Duke Energy Ohio with respect to
19 the PJM settlement issue? Was that after your
20 involvement on May 6, 2013?

21 A. I'm not sure if anyone contacted them
22 before I was involved. Because I don't know what
23 happened before I was involved. At that point it was
24 given to me -- it wasn't given to me as a settlement
25 issue, it was given to me as a billing issue, that we

1 later realized it was a settlement issue.

2 So if somebody on the Load Forecasting or
3 the Margin Management side had already contacted
4 Duke, I wasn't privy to that information.

5 Q. And as you sit here today you have no
6 personal knowledge of anyone from Direct Energy
7 reaching out to Duke Energy Ohio in February of 2013.

8 A. I do not, no.

9 Q. Sir, if we could carry down to paragraph
10 15 of the complaint, the first sentence there that's
11 still on page 6 indicates that "Due to Duke's delay
12 in resettlement, the PJM process now requires
13 unanimous agreement of all load serving entities for
14 PJM to resettle." Correct?

15 A. Correct.

16 Q. In May of 2013 was the 60-day
17 reconciliation process administered by PJM available
18 to Direct Energy with regard to January 2013
19 invoices?

20 A. No.

21 Q. Was that 60-day reconciliation process
22 available in May of 2013 for the February 2013 PJM
23 invoices?

24 A. To beginning of May. By the end of May,
25 no.

1 **Q.** So at the time that Direct Energy and Duke
2 Energy Ohio were having conversations in the middle
3 of May 2013 carrying over into the meeting in early
4 June of 2013, was Settlement B or the 60-day
5 reconciliation process an option for January and
6 February?

7 **A.** According to this, no.

8 **Q.** Mr. Kennelly, do you know why the SunCoke
9 account was originally set up to be dual billed?

10 **A.** My understanding is they requested it but
11 that's just an assumption.

12 **Q.** And, Mr. Kennelly, Direct Energy Business
13 is not a customer of Duke Energy Ohio, correct?

14 **A.** Correct.

15 **Q.** On page 6 of your testimony, sir, do you
16 have that?

17 **A.** I have a copy of it.

18 **Q.** Okay. There's a paragraph, sir, that
19 begins on page 6, line 11, discussing the settlement
20 process for invoices issued by the Regional
21 Transmission Organization, which in this instance
22 would be PJM, correct?

23 **A.** Correct.

24 **Q.** What did you rely upon for purposes of
25 drafting that portion of your testimony?

1 **A.** My understanding of how our settlement
2 process works. I have interaction with the
3 Settlement department, so my interaction is trying to
4 understand what they do in a very general sense. So
5 it would be based on that.

6 **Q.** And when you say, beginning on line 17,
7 that "RTO settlements are not considered to be final
8 until four months after the close of the delivery
9 month," what's the basis for that statement?

10 **A.** We see the resettlement come through up to
11 four months out. At that point you're mainly looking
12 at ancillary components changing, maybe a black start
13 rate or something like that changes. So we use the
14 settlement detail and the detail components of that
15 for our market-to-market customers. So they're
16 paying the market rate for a component.

17 Well, at the end of the month we don't
18 know what the market rate is going to be because it's
19 going to change in the resettlement, so we bill on an
20 estimated rate and what we found unless we wait three
21 or four months out, there's too much movement where
22 there can be a change in that rate and we're not
23 capturing or there's a drop and we're not giving the
24 customers the benefit of the market-to-market
25 billing, so we wait four months and see it go out

1 that far to make sure nothing has changed.

2 So something for January, May would be the
3 month, April-May would be the month that we actualize
4 that for accounting purposes. So Accounting closes
5 the books on it, anything that comes in for that
6 month after that point gets treated as a prior period
7 adjustment that gets booked in the month it's
8 received.

9 It doesn't go back, we don't reopen
10 January in June, so to speak. But in say March if we
11 get a January charge, we can go back and allocate the
12 January and it affects our January trueups for the
13 market-to-market customers.

14 **Q.** And when you say "not considered to be
15 final," they're not considered to be final by whom?

16 **A.** Us.

17 **Q.** Okay. So PJM has a 60-day reconciliation
18 process, correct?

19 **A.** They do.

20 **Q.** And after that 60-day process how are PJM
21 invoices resettled or reconciled, if at all, to your
22 knowledge?

23 **A.** We still get reconciling items on there.
24 Our rates will get revised. It's not so much the
25 load changing after that but it's the rates that

1 change mostly after that. What it will do is it will
2 change the rate and we'll have to go back and then
3 re-update it.

4 Q. And is that a PJM invoice reconciliation
5 that is administered by PJM?

6 A. I don't believe they provide the
7 reconciliation. I believe they change the rates and
8 we do our own reconciliation.

9 Q. And how do you do the reconciliation? Is
10 that just with an individual, one other individual
11 entity?

12 A. I don't know because I don't do
13 reconciliation.

14 Q. Okay. Do you do the actualizing four
15 months out?

16 A. No. We do the -- we get -- we're fed
17 information from the actualizing. What we do four
18 months out is we do the trueups on the billing side,
19 we oversee that process.

20 Q. And Direct Energy has determined to
21 actualize accounts four months out?

22 A. Right, customer accounts.

23 Q. Customer accounts, okay. And that's
24 because there could be some different information
25 that may come in during that four-month period.

1 **A.** Correct.

2 **Q.** So when you say that the settlement's not
3 considered final, again, that's in the eyes of Direct
4 Energy.

5 **A.** Correct.

6 **Q.** Sir, you indicate on the same page,
7 page 6, line 16, that's "It is normal for charges on
8 the RTO invoice to 'resettle' (i.e., be corrected) in
9 subsequent months." Correct?

10 **A.** Yes.

11 **Q.** And what is your basis for that statement?

12 **A.** We've seen it happen.

13 **Q.** "We" being?

14 **A.** Direct Energy.

15 **Q.** But that's not a process that you would
16 normally be involved in, correct?

17 **A.** We see the outcome of that. So if a
18 settlement's going to change for any past month,
19 we'll be made aware of that because we have to grab
20 settlement information and use it to build our trueup
21 models. So we'll see that this component changed and
22 then we know that we have to change the billing
23 because of that.

24 **Q.** And so on the top of page 7 you're
25 discussing the actualizing process. When is actual

1 load billed by the RTO, in this instance PJM, first
2 available to Direct Energy Business?

3 A. Well, I know it's available on a weekly
4 basis based on the weekly invoicing. I don't know if
5 it's provided in some other format more frequently
6 than that or outside of that. I wouldn't be sure.

7 Q. And when you say "weekly basis," so does
8 PJM generate a bill, say, on a Friday of every week?

9 A. I'm not sure what day it is. I imagine it
10 would be somewhere on the weekend it would capture
11 the, I think the Monday through Friday would be
12 contained on one, I don't know if it's a Sunday or
13 Saturday that it generates on.

14 Q. So pretty close proximity to the time the
15 invoice is issued to the period reflected in that
16 invoice.

17 A. Yes. Yes. So I didn't understand the
18 question. Right. So if it's -- so today's Tuesday,
19 for last week we would already have the invoice in
20 hand.

21 Q. Okay. And the expected load that you
22 reference on page 7, line 6, that's expected load
23 that Direct Energy calculates based upon historical
24 usage?

25 A. No, it's based on the accounts under

1 contract and what the customer -- when we sign the
2 customers up, there's an expected forward load. We
3 don't necessarily rely a hundred percent historical
4 on weather or business increases that we know are
5 going to change. So there's an expected load on
6 that.

7 So that plus changes on the fly, meaning
8 as the days go by we have our day-ahead purchases in
9 place, that's what we expect. Everything in our
10 books should be fully hedged so if we haven't bought
11 on the day-ahead market, then that's a variance.

12 Q. And so on page 7 of your testimony you're
13 describing the activities that occurred on May 6,
14 2013, where your department actualized January 2013
15 for SunCoke, correct?

16 A. Right. In that case actualized wouldn't
17 be from the finance accounting perspective, that's
18 outside of. It would be actualized in the sense of
19 the trueup what we use the four months out
20 information for. We build the trueups after Finance
21 actualizes the months from an accounting standpoint,
22 we'll then actualize or true up the ancillaries.

23 Q. So did your group discover this variance
24 or did it come from Load Forecasting or Margin
25 Management?

1 **A.** They presented us with the variance data
2 and said hey, this is what they're saying our total
3 load is, here's what we had in day-ahead, do you guys
4 know what's going on? Why are we billing the total
5 amount? So that's the data we were given was total
6 load, expected load, variance, and why aren't you
7 billing it.

8 **Q.** So did Load Forecasting or Margin
9 Management prompt your department to actualize the
10 SunCoke account?

11 **A.** Yes.

12 **Q.** You would not have otherwise done that?

13 **A.** We would have done it if they were on a
14 pass-through product. So anyone that's on a
15 pass-through product, we do it in aggregate. So
16 we're looking at the total PJM settlement for each
17 zone and seeing what the final ancillaries ended up
18 being and then we'll do a trueup on the ancillary
19 cost. Those -- that's our normal four-months-out
20 process.

21 This was sort of like torpedoes into the
22 middle of that where the Finance group says hey,
23 we're seeing a large variance. And it's not out of
24 the ordinary that they come to us. Usually the
25 variables are much smaller and harder to dissect,

1 maybe it's just a market swing or something like
2 that.

3 This one was large and they seemed
4 somewhat frantic to get an answer, so we decided to
5 look into it right away.

6 Q. So you just introduced a new department,
7 Finance group.

8 A. And finance, so let me, I say "finance"
9 generically. Both Load Forecasting and Margin
10 Management fall under Finance. And then Accounting,
11 that's all under the same finance umbrella.

12 Q. So Finance, Load Forecasting, Accounting,
13 and your Margin Management -- no, Load Forecasting,
14 Accounting, Margin Management all roll up to your
15 Finance organization.

16 A. Correct.

17 Q. And someone within that Finance
18 organization brought this to your attention.

19 A. Correct. I believe it was either Cindy
20 Rice or Rich Caporal or maybe both. We may have
21 gotten two emails on it.

22 Q. Do you know when your Finance group
23 discovered this variance relative to when you were
24 contacted on May 6, 2013?

25 A. They would have seen it initially when

1 they closed January. But at that point if they're
2 thinking it's a billing problem, then they would be
3 thinking we're only 50 percent billed out for January
4 and February, there must be a delay on billing the
5 rest of the volumes.

6 When February comes and goes, I'd imagine
7 that would still be there, still be the variance
8 there and they probably would have the same concerns:
9 Why haven't we billed out those volumes yet.

10 **Q.** So when is January closed out?

11 **A.** So the initial closing takes place in
12 beginning of February. But then it actualizes so
13 they still book to an estimate meaning let's say we
14 expect to have, and I'm going to use -- these are
15 made up numbers, just hypothetical numbers.

16 Let's say we expect to have a billion
17 dollars of revenue for a month based on what
18 customers we have in our system and what the expected
19 volumes are.

20 So when we -- when the month ends in
21 January, we look what have we billed for flow January
22 and against what we expected. Well, that amount
23 that's expected is still booked as deferred revenue,
24 or I guess it would be like accrued revenue.

25 So then as the subsequent months go by,

1 that estimated gap that wasn't actualized yesterday
2 should be decreasing. So by the time you get four
3 months out, shouldn't be anything left. Anything
4 left there is a true variance over what you
5 anticipated.

6 So what happened in this case is so if you
7 imagine in the Duke market we were 50 percent we had
8 this unbilled out load sitting there and what their
9 thought was wait a minute, we don't want to increase
10 revenue up to that because we don't even have that
11 much in our forecast. So that settlement piece out
12 there is just a cost with no offsetting revenue.

13 So the thought was we'd have billings that
14 would exceed forecast and bring that gap down. Over
15 the period of four months that didn't happen, that
16 gap stayed. So by the time we get to May and that's
17 the actualization time period, whatever is there
18 you're booking it as a gain or a loss and you move on
19 to the next month.

20 So at this point they're looking at oh, my
21 gosh, our settlement data is through the roof, that's
22 cost, we don't have billings to support it and we're
23 looking at now a large loss. So ideally they would
24 have turned to us sooner. But by waiting till May,
25 it was more or less a last-minute request on their

1 part to see what happened.

2 Q. But the 50 percent variance would have
3 existed in early February when your Finance team
4 closed out January 2013, correct?

5 A. Correct.

6 Q. The 50 percent variance would have existed
7 in early March when your Finance team closed out
8 February 2013, correct?

9 A. Correct.

10 Q. The 50 percent variance would have existed
11 in early April 2013 when your Finance team closed out
12 March 2013.

13 A. Correct. And just to make sure we have
14 the percentage, it's actually 95 percent variance but
15 50 percent of the total load was the gap. But the
16 variance would be measured on what's expected. So it
17 was 95 percent of what was expected was showing up as
18 unbilled.

19 Q. And that 95 percent variance would have
20 persisted --

21 A. Each of those months.

22 Q. -- for each of those months we just talked
23 about.

24 A. Yep.

25 Q. Do you know, Mr. Kennelly, what Direct

1 Energy's process was in January 2013 for receiving,
2 reviewing, and paying PJM invoices?

3 A. Other than what we discussed earlier,
4 which was comparing them to historicals, what they've
5 seen, and against what the forecasted volumes would
6 be, nothing else off the top of my head.

7 Q. And you talked earlier about the usage
8 variance that's used by Direct Energy with respect to
9 customer bills.

10 A. Yes.

11 Q. And how the SunCoke circumstance would
12 have brought to light the need for some other, maybe
13 some other revisions to the systems --

14 A. Right.

15 Q. -- on the billing side?

16 A. Right.

17 Q. Have there been any system revisions on
18 the PJM settlement side that resulted from SunCoke?

19 A. I don't know.

20 Q. Okay. Who would know that?

21 A. So the Settlements, somebody in the
22 Settlements department. There's been heavy turnover
23 there in the past six months, so not exactly sure who
24 the manager of that department is right now.

25 Q. Okay.

1 **A.** But Hope Vargas is the director, somehow
2 they report up to her through a couple iterations.

3 **Q.** Is SunCoke still a customer of Direct
4 Energy?

5 **A.** Yes, they are.

6 **Q.** And on page 11, sir, of your testimony,
7 and as I read your testimony should I read any
8 references that you make to meter data errors to be
9 including both inaccurate meter information and
10 reporting information?

11 **A.** Yes.

12 **Q.** On page 11, line 2, sir, you indicate that
13 "Duke was unable to provide Direct Energy Business
14 with billable interval meter data in EDI format."

15 **A.** Correct.

16 **Q.** Do you know why Duke Energy was unable to
17 provide the billable interval meter data?

18 MR. CLARK: I'm sorry, one second. Were
19 we getting into any confidential as you labeled
20 Mr. Abbott's testimony?

21 MS. SPILLER: About the configuration?

22 MR. CLARK: I want to make sure we're
23 careful about that.

24 THE WITNESS: I couldn't repeat that
25 anyway from memory.

1 MR. CLARK: Fair enough.

2 Q. Sir, in Mr. Abbott's testimony there's
3 some testimony that we've redacted, a lot of it has
4 to do with SunCoke's facilities in our view, and I
5 think consistent with that of your counsel is that
6 customer specific information we should treat as
7 confidential information unless the customer is
8 comfortable with us releasing that in the public
9 domain.

10 A. Okay.

11 Q. I'll try to keep us on the public record
12 and ask the question this way: Page 11, line 2 of
13 your testimony where you reference Duke Energy's
14 ability to provide interval meter data in EDI format,
15 is it your understanding that that was a result or a
16 function of how the configuration existed with
17 respect to SunCoke?

18 A. It's my understanding the configuration
19 with the SunCoke in conjunction with the capabilities
20 of Duke's system to handle that configuration. So I
21 think it was a combination. I think Sun's
22 configuration in itself may have been fine if the
23 interval systems of Duke were different. And
24 likewise. So I think it's both.

25 Q. And so Duke Energy Ohio is manually

1 providing a spreadsheet to Direct Energy in respect
2 of SunCoke, correct?

3 A. Yes.

4 Q. And Duke Energy Ohio is not the only
5 distribution utility to do that for Direct Energy,
6 correct?

7 A. It's the only one that I know of. Doesn't
8 mean there aren't others, I'm just not aware of them.
9 Isn't surprising.

10 Q. Were you present in Mr. Vance's deposition
11 when he talked about how that information may come
12 via spreadsheet if the systems -- if the EDI systems
13 cannot accommodate it?

14 A. I don't know if I was there for that part
15 or not. I mean, if he said there are instances where
16 that happens to others, I would defer to him.

17 Q. Okay. To your knowledge, sir, has Direct
18 Energy spoken with representatives of PJM concerning
19 this particular issue involving SunCoke and
20 resettlement?

21 A. Has?

22 Q. Direct Energy.

23 A. Spoken to?

24 Q. PJM.

25 A. I don't know.

1 **Q.** The invoices that are issued by PJM and
2 that are paid by Direct Energy, where do those
3 dollars go?

4 **A.** They go to PJM. I don't know where they
5 go from there but I do know that we pay PJM.

6 **Q.** And, sir, having not been involved in Ohio
7 regulatory proceedings before, you're not offering
8 any opinions with respect to what relief if any the
9 Ohio Commission could authorize in this case, are
10 you?

11 **A.** Correct, I'm not stating what they could
12 do.

13 **Q.** On page 14, line 20 of your testimony,
14 sir, you say that -- I'll let you go there, I'm
15 sorry.

16 Are you there?

17 **A.** Yes.

18 **Q.** Page 14, line 20. The sentence actually
19 begins on line 19 of your answer.

20 **A.** Correct.

21 **Q.** You indicate that "somebody has the
22 money." Do you see that?

23 **A.** Wait, which line again?

24 **Q.** Page 14, line 20.

25 **A.** Yes.

1 **Q.** Who has the money?

2 **A.** I don't know. And I think that's the
3 question is if we don't, somebody must. And it could
4 be another supplier, it could be a PJM. I don't
5 think my understanding of the market is advanced
6 enough to know where the money flows. But just from
7 a -- if we were overcharged, then it had to go
8 somewhere.

9 **Q.** Do you know why Direct Energy submitted a
10 letter to PJM in approximately November of 2014?

11 **A.** No.

12 **Q.** And, Mr. Kennelly, there are some things I
13 may mark, I may not, but I'm going to start some of
14 these just for purposes of I'm going to show this to
15 you and ask if you can even identify it and maybe we
16 can avoid marking of the deposition and just
17 reference to Bates numbers.

18 **A.** This looks like interval detail from a PJM
19 invoice.

20 **Q.** Okay. And so --

21 **A.** From the Duke market.

22 **Q.** And, sir, I'm just going to identify for
23 purposes of the record this is information that was
24 provided by your counsel, the Bates labels are PUCO
25 14-1277 Direct Set 1, Bates No. 005694, numbered

1 sequentially through 005711.

2 This is marked as confidential and I think
3 maybe just for ease of the transcript I'm not going
4 to mark it as an exhibit, but you believe that this
5 is information that comes from PJM.

6 A. I believe it is. Either that or it's
7 built from information that came from PJM. Meaning
8 so I would have received this information from our
9 Settlements department when I asked for the invoice
10 plus the backup, I would have been provided the
11 invoice plus this.

12 Q. Okay.

13 A. How they got this, I'm not exactly sure.
14 But it's their backup for the invoice.

15 Q. And this looks like it reflects -- have to
16 admit I'm getting a little old with the eyes here.
17 It looks like it reflects a period of February 1,
18 2013, through February 28, 2013. Correct?

19 A. This one here is February 1st through
20 February 28th.

21 Q. So you believe this could be the
22 monthly -- the information that's available on a
23 monthly basis.

24 A. Right. So this should tie into the
25 February invoice.

1 **Q.** Okay. And just to confirm, similarly,
2 sir, documents that were identified by Direct Energy,
3 again confidential Bates No. 005674 through 005693.
4 Looks to be the same format as the prior series of
5 documents we just discussed but for the period of
6 January 1, 2013, through January 31, 2013, correct?

7 **A.** Correct, this would support the January
8 invoice.

9 **Q.** And, sir, another document, again just
10 trying to get an understanding of what these are.
11 Confidential, Direct, Bates No. 005655 through
12 0056 -- well, it says 73. So let me start with the
13 first one. 005655, do you know what that is?

14 **A.** Looks like a printout from settlements of
15 payments that were made to PJM.

16 **Q.** And then 005673, similarly a printout of
17 payments made?

18 **A.** Correct. Same thing, just different
19 timeframe.

20 **Q.** And these would reflect probably the
21 weekly transactions? The weekly invoices?

22 **A.** It appears to be the weeklies, correct.

23 **Q.** And you don't know what level of detail is
24 behind this PJM weekly invoice, correct?

25 **A.** The weekly, no. I have not requested

1 that.

2 Q. Sir, I would like to go ahead and mark
3 this.

4 (KENNELLY EXHIBIT 4 WAS MARKED.)

5 Q. Sir, I'll hand you what's been marked as
6 Kennelly Exhibit 4. This is the response to a
7 discovery request tendered by Duke Energy Ohio, the
8 response is from Direct Energy. And it's a discovery
9 request for which you are identified as the
10 responsible person, correct?

11 A. Yes.

12 Q. Do you utilize the nMarket_PJM tool?

13 A. I don't. There are some people in my
14 department that do. But I've never utilized it. I'm
15 aware of it.

16 Q. So for purposes of forming this answer and
17 identifying -- being identified as the responsible
18 person, what information did you need to rely upon?

19 A. Gathering information from the Settlement
20 department as far as just asking them how do you
21 perform these functions. Getting their information
22 and then same thing with their review, how do we
23 review this information and then provide it.

24 Q. And what is the PJM MSRS report system?

25 A. My understanding is that's a system they

1 use for settlement purposes. But I've never used it
2 so I'm not certain.

3 Q. And there's a four-step process that's
4 identified in this discovery response.

5 A. Yes.

6 Q. Have you personally completed any or all
7 of these four steps?

8 A. No.

9 Q. Has anyone in your group?

10 A. No. This would be performed by the
11 Settlement department.

12 Q. And so did you go to the Settlement
13 department for purposes of understanding the
14 preliminary -- the review of preliminary information?

15 A. What we asked was what processes did they
16 have in place for this.

17 Q. And when you say "the preliminary
18 information," is that the weekly information?

19 A. Correct.

20 Q. And so when is that review of the
21 preliminary --

22 A. Preliminary may also -- let me rephrase
23 that. Preliminary is anything that's not final. So
24 the weeklies are not final so they're obviously
25 preliminary. The monthly, even though it's summary,

1 is still preliminary because it's not final until the
2 60-day. So still preliminary in that sense.

3 Q. And so when you say "not final," is that
4 in the eyes of PJM or in the eyes of Direct Energy?

5 A. I think in that case it's the eyes of PJM
6 because the settlement process would be final in the
7 eyes of PJM from my understanding. Once again, from
8 a Direct Energy standpoint we can go out for three or
9 four months depending on the market, before we call
10 something final, but in this I believe current month
11 is still considered to be preliminary.

12 Q. So with respect to the -- and we'll start
13 with the weekly invoices and the four steps that are
14 identified in this discovery response identified as
15 Kennelly Exhibit No. 4. When are those steps
16 performed relative to when the weekly invoice is
17 received?

18 A. They would be performed right after they
19 receive weekly information. So if they're getting
20 information from last week, it would be -- I would
21 expect them early this week to be doing these steps.

22 Q. And then when is the information performed
23 on that monthly -- I'm sorry. When is the
24 preliminary -- strike that.

25 When is the review performed on the

1 monthly preliminary information?

2 **A.** Again, it would be soon after it's
3 received. So we usually receive the monthly
4 information by, say, the third or fourth day of the
5 following month. As soon as that's received, within
6 days they should be working on that.

7 **Q.** And how does the group verify the amount
8 due or to be received in step 1?

9 **A.** On that I'm not sure.

10 **Q.** And what is the PJM CVS -- I'm sorry, CSV
11 settlement data?

12 **A.** Are we still on which point?

13 **Q.** I'm looking, sir, it looks like that
14 appears in step 4.

15 **A.** Okay.

16 **Q.** It also has a --

17 **A.** So that data may be what generates those
18 reports, that detail report.

19 **Q.** Do you know if it is?

20 **A.** I do not.

21 **Q.** And through this review of preliminary
22 information is Direct Energy's expected load forecast
23 implicated or involved?

24 **A.** From a settlement perspective?

25 **Q.** Yes, sir.

1 **A.** I do not know.

2 **Q.** And in this review of preliminary
3 information by the Settlements group is historical
4 usage at all considered or reviewed?

5 **A.** I don't know but I doubt it.

6 **Q.** Could it be?

7 **A.** Could.

8 **Q.** Depending on the system maybe?

9 **A.** Yeah. I'm not sure that historical
10 information makes it over to the Settlement group.

11 **Q.** And you're not familiar with the PJM
12 dashboard, correct?

13 **A.** Correct.

14 **Q.** Have you had occasion in your position at
15 Direct to utilize PJM's InSchedule tool?

16 **A.** No.

17 **Q.** How do you know that InSchedule is the
18 successor to eSchedule?

19 **A.** I asked if our -- there's individuals that
20 are in Load Forecasting, I asked them if they used it
21 and when they started using it, and they explained it
22 was a successor application.

23 **Q.** Who is Angela Williams?

24 **A.** She works in Settlements.

25 **Q.** Mr. Kennelly, I appreciate your coming

1 here to Columbus for your deposition. I don't have
2 any further questions.

3 **A.** Okay.

4 (Whereupon, at 3:08 p.m., the deposition
5 was concluded and signature was not waived.)

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AFFIDAVIT

State of Ohio)
) SS:
County of _____)

I, ROBERT KENNELLY, do hereby certify that I have read the foregoing transcript of my deposition given on Tuesday, April 21, 2015; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

ROBERT KENNELLY

I do hereby certify that the foregoing transcript of the deposition of ROBERT KENNELLY was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the _____ day of _____, 2015.

Notary Public

My commission expires _____, _____.


--|--


CERTIFICATE

State of Ohio)
) SS:
County of Franklin)

I, Julieanna Hennebert, RPR and RMR, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do certify that, before giving his deposition, ROBERT KENNELLY was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the foregoing is the deposition given at said time and place by ROBERT KENNELLY; that I am neither a relative of nor employee of any of the parties or their counsel and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office on this 24th day of April 2015.


Julieanna Hennebert, RPR, RMR,
and Notary Public in and for the
State of Ohio.



My commission expires February 19, 2018.

(1242-JLH1)

--|--

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Complaint of Direct
Energy Business, LLC

Compliant

v.

Duke Energy Ohio, Inc.

Respondent

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)
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)
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)
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Case No. 14-1277-EL-CSS

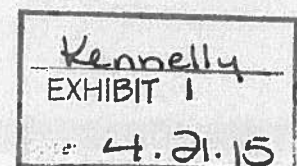
**FIRST NOTICE OF DUKE ENERGY OHIO
TO TAKE DEPOSITION *DUCES TECUM* OF
DIRECT ENERGY SERVICES, LLC**

Pursuant to Ohio Admin. Code Rule 4901-1-21(B), please take notice that Duke Energy Ohio, Inc. (Duke Energy) will take the oral deposition of Robert Kennelly on April 21, 2015 beginning at 1:00 PM and will continue thereafter until complete.

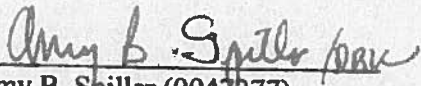
The deposition will take place at Direct Energy's offices located at 21 East State Street, 19th Floor, Columbus, Ohio 43215. The deposition will be taken upon oral examination (as if on cross-examination) before an officer authorized by law to take depositions.

Pursuant to Ohio Admin. Code 4901-1-21(E) and 4901-1-20, the witness is requested to produce at the time of his deposition true and accurate copies of the documents identified in Exhibit A.

The deposition will begin at 1:00 PM and continue day to day until complete. Parties are invited to attend and to cross-examine.



Respectfully submitted,


Amy B. Spiller (0047277)
Deputy General Counsel
Jeanne W. Kingery (0012172)
Associate General Counsel

DUKE ENERGY OHIO, INC.
139 East Fourth Street, ML 1303 Main
P. O. Box 960
Cincinnati, Ohio 45202

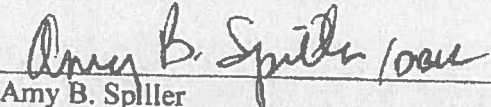
EXHIBIT A

Duke Energy Ohio hereby requests that, at the time and place set forth above in the notice of deposition, *duces tecum*, the witness shall produce true and accurate copies of the following documents:

1. Any and all documents that were reviewed by said witness for purposes of preparing their direct testimony relative to the above-captioned proceeding.
2. Any and all documents created or authored by said witness for purposes of preparing their direct testimony relative to the above-captioned proceeding.
3. Any and all documents referenced in said witness's direct testimony relative to the above-captioned proceeding.
4. Any and all documents reviewed by said witness in preparing, or otherwise assisting in the preparation of, discovery responses submitted by Direct Energy relative to the above-captioned proceeding.
5. Any and all documents prepared by said witness for purposes of preparing, or otherwise assisting in the preparation of, discovery responses submitted by Direct Energy relative to the above-captioned proceeding.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing was served on the following parties of record by electronic service, this 17th day of April, 2015.


Amy B. Spiller

Gerit F. Hull
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/17/2015 2:42:04 PM

in

Case No(s). 14-1277-EL-CSS

**Summary: Notice of Deposition First Notice of Duke Energy Ohio to Take Deposition Duces
Tecum of Direct Energy Services, LLC - Robert Kennelly electronically filed by Mrs. Adele M.
Frisch on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B and Kingery, Jeanne W**

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

Direct Energy Business, LLC,

Complainant,

v.

Duke Energy Ohio, Inc.

Respondent.

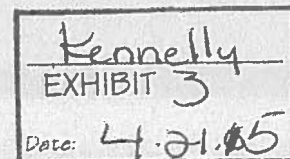
Case No. 14-1277-EL-CSS

COMPLAINT

Pursuant to Ohio Revised Code ("R.C.") 4905.26, 4905.28, 4905.32, 4905.32, 4905.54, 4905.04, 4905.05, 4905.06, 4928.11, and 4928.16, Direct Energy Business, LLC ("Direct") brings this Complaint against Duke Energy Ohio, Inc. ("Duke"), and states as follows:

OVERVIEW

This Complaint follows nineteen months of efforts by Direct to obtain Duke's voluntary resolution of metering errors that precluded Direct from properly billing its retail electricity customer for hundreds of thousands of dollars in electric service charges, including charges for energy service and pass-through of certain transmission service charges. These same metering errors have also caused Direct to incur millions of dollars of erroneous energy charges from PJM Interconnection, L.L.C ("PJM"). PJM requires resettlement of errors within sixty days or PJM imposes a procedural requirement that all load serving entities agree to resettle. In spite of Direct's concerted efforts to find compromise solutions through resettlement and its considerable patience, Duke has failed to correct these errors in a timely manner and failed to permit Direct to both properly bill its customer and receive proper billing of PJM charges. Duke's failures violate



the Commission's metering rules and constitute unjust, unreasonable, and unjustly discriminatory service to Direct and Direct's retail customer and unjustly preferential service to Direct's competitors, all under Duke's tariffs that are on file with this Commission. Accordingly, the Commission has jurisdiction and grounds to grant this Complaint under R.C. 4905.26 and R.C. 4928.16(A)(2). The Commission has statutory authority pursuant to R.C. 4928.16(B)(1) to order the restitution sought herein based on these tariff violations and based on Duke's violation of the Commission's metering rules.

PARTIES AND JURISDICTION

1. Direct is a Delaware limited liability company with its principal place of business located in Pittsburgh, Pennsylvania. Direct (f/k/a Strategic Energy, LLC) applied for and received a competitive retail electric service ("CRES") certificate from the Commission in Case No. 00-1758-EL-CRS to provide aggregation and power marketing services. The certificate (No. 00-005(1)) was issued pursuant to Ohio Adm. Code 4901:1-24-(01-13) and 4901:1-21-(01-15) and R.C. 4928.08 and was effective October 27, 2000. This certificate, as renewed and amended, is presently in effect and has been in effect at all times following its issuance.
2. Duke is a public utility and an electric distribution company ("EDC") with service territory in nine counties in the southwestern corner of Ohio, with its principal place of business located in Cincinnati, Ohio. Duke provides Certified Supplier Services to Direct pursuant to its Certified Supplier Tariff, P.U.C.O. Electric No. 20 ("Supplier Tariff"). These services include, *inter alia*, metering customer load for purposes of CRES billings to its customer and for purposes of PJM settlement and billing to the CRES. As discussed below, this Complaint arises because of Duke's provision to PJM of inaccurate

meter data used for settlement with respect to one Direct customer, such that Direct could not accurately bill its customer and was overbilled by PJM.

3. The Commission's jurisdiction over this Complaint is plainly apparent. R.C. 4905.26 provides that the Commission shall initiate a hearing on a complaint against a public utility if presented with reasonable grounds showing that:

any rate, fare, charge, . . . schedule, classification, or service, . . . or service rendered . . . is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential

In this case, Duke has provided Certified Supplier Services—an Ohio Commission-regulated service—to Direct that are unreasonable, unjust, insufficient, discriminatory, and preferential because Duke's metering has produced inaccurate results. As a result, Direct cannot accurately bill its customer and Direct has been over-billed by PJM in the amount of millions of dollars.

4. The Commission's jurisdiction over this matter is provided by a number of statutory grants of authority. R.C. 4905.04 provides the Commission with the "the power and jurisdiction to supervise and regulate public utilities . . . , [and] to require all public utilities to furnish their products and render all services exacted by the commission or by law . . ." R.C. 4905.05 extends the Commission's jurisdiction to "the records and accounts of the business [of the public utility] done within this state" R.C. 4905.06 grants the Commission general supervisory authority over all public utilities, including the power to examine whether the public utility is in "compliance with all laws [and] orders of the commission"

5. R.C. 4905.28 provides the Commission with jurisdiction over public utility metering, with the intent that the Commission "secure the accuracy of all meters and appliances for measurements." The Commission has enacted rules implementing this directive, including Ohio Adm. Code 4901:1-10-05(B), which states in part that "No metering device shall be placed in service or knowingly allowed to remain in service if it does not comply with these standards." Ohio Adm. Code 4901:1-10-05(F) states that, "Metering accuracy shall be the responsibility of the electric utility."
6. R.C. 4905.32 requires public utilities to provide services in accordance with their tariffs on file with the Commission and in a uniform manner. R.C. 4905.54 requires public utilities to comply with the Commission's orders and provides for civil penalties.
7. The Commission's jurisdiction over Duke's provision of Certified Supplier Services is plainly apparent. R.C. 4928.11 provides the Commission with authority to "specify minimum service quality, safety, and reliability requirements for noncompetitive retail electric services supplied by an electric utility in this state, to the extent such authority is not preempted by federal law." R.C. 4928.16(A)(2) states:

The commission also has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility has violated or failed to comply with any provision of sections 4928.01 to 4928.15, any provision of divisions (A) to (D) of section 4928.35 of the Revised Code, or any rule or order adopted or issued under those sections

R.C. 4928.35(C) states:

The schedule under division (A) of this section containing the unbundled distribution components shall provide that electric distribution service under the schedule will be available to all retail electric service customers in the electric utility's certified territory and their suppliers on a nondiscriminatory and comparable basis on and after the starting date of competitive retail electric service.

FACTS

8. On January 4, 2013, Direct began providing competitive retail electricity service to its customer SunCoke Energy, Inc. ("SunCoke") at SunCoke's Middletown, Ohio cokemaking facility. SunCoke is "dual billed" by both Duke and Direct. Direct bills SunCoke for the competitive retail electricity services that Direct provides to SunCoke. Duke bills SunCoke for the non-competitive portion of the electricity service provided.
9. Duke provides Certified Supplier Services to Direct pursuant to its Commission-jurisdictional Supplier Tariff. "'Certified Supplier Services' means those services that provide the interface and coordination between the Certified Supplier and the Company in order to effect the delivery of Competitive Retail Electric Service to serve End-use Customers located within the Company's service territory." Supplier Tariff, Sheet No. 20.3. Duke provides these Certified Supplier Services to CRES suppliers, including Direct. These services include, *inter alia*, metering customer load for purposes of CRES billings to its customer and for purposes of PJM billings to the CRES. See Supplier Tariff, Sheet No. 38.2 (Metering Services and Obligations), & Sheet No. 44.2 (Meter Data Management).
10. For the period January 2013 through July 2013, Duke reported load data to PJM for Direct's loads that included approximately 27,000 MWh per month attributed to Direct's customer SunCoke. However, Duke invoiced SunCoke for utility charges during the same period based on average monthly usage of approximately 4,275 MWh per month. Duke corrected the meter data submitted to PJM for the months of March through July within the respective sixty-day resettlement windows. The months of January and February remain outstanding..

11. Duke acknowledges that the meter data Duke provided to PJM were erroneous and that Duke's own invoices to SunCoke reflected the correct meter data. However, Duke has failed to initiate the PJM resettlement process for this customer in a timely manner for the January 2013 and February 2013 time period.
12. As a result, PJM's invoices to Direct were based on energy usage over six times higher than the actual amount of energy consumed by SunCoke and Direct estimates it overpaid PJM by approximately \$7 million for this period. Direct is not permitted to withhold payments from PJM. The amount overpaid remaining after corrections for March through July is approximately \$2 million for January and February.
13. Direct raised this issue with Duke as soon as the meter data for January 2013 became available in February 2013. Duke was able to correct the metering error, such that it did not appear in some periods after July 2013, and Duke was able to obtain resettlement by PJM in other periods after July 2013.
14. Duke initially promised to provide PJM with the correct meter data and assist Direct in obtaining a resettlement by PJM for the January 2013 through July 2013 period. However, Duke has failed to diligently pursue the matter.
15. Due to Duke's delay in resettlement, the PJM process now requires unanimous agreement of all load serving entities for PJM to resettle. Despite Duke's delay resulting in the inability to resettle within the sixty-day process, Duke's last position was that the burden falls on Direct to obtain the unanimous consent of nearly forty other retail suppliers doing business with Duke before Duke will transmit the correct meter data to PJM and initiate the resettlement process. In other words, Duke believes that Direct must convince its competitors that Direct deserves a refund, even though the metering error is plainly

Duke's. Duke sent a request to market participants for consent to resettlement. The request indicated a potential cost to those participants. However when only 4 of the 39 participants responded, Duke took no further action.

COUNT I

VIOLATION OF THE METERING PROVISIONS IN OHIO ADM. CODE 4901:1-10-05(B) & 4901:1-10-05(F)

16. Ohio Adm. Code 4901:1-10-05(B) states in part that "No metering device shall be placed in service or knowingly allowed to remain in service if it does not comply with these standards." By its own admission, during the period of January 2013 through July 2013, Duke knowingly allowed an inaccurate metering device to remain in service. Accordingly, Duke has violated Ohio Adm. Code 4901:1-10-05(B).
17. Ohio Adm. Code 4901:1-10-05(F) states that "Metering accuracy shall be the responsibility of the electric utility." By failing to submit corrected meter data to PJM and initiate resettlement in a timely manner for the January 2013 through July 2013 period, Duke has failed to take responsibility for the accuracy of its metering. Accordingly, Duke has violated Ohio Adm. Code 4901:1-10-05(F).

COUNT II

DUKE'S RENDERING OF METERING SERVICES UNDER ITS SUPPLIER TARIFF HAS BEEN UNJUST, UNREASONABLE, UNJUSTLY DISCRIMINATORY AND UNJUSTLY PREFERENTIAL IN VIOLATION OF R.C. 4905.32 & R.C. 4928.35(C)

18. Duke provides Certified Supplier Services to Direct pursuant to its Supplier Tariff. These services include, *inter alia*, metering customer load for purposes of CRES billings to its customer and for purposes of PJM billings to the CRES. This Complaint arises because of Duke's provision of inaccurate meter data to Direct and to PJM with respect to

Direct's customer, SunCoke, such that Direct cannot accurately bill its customer and was overbilled by PJM. Moreover, despite Duke's knowledge of the error and Duke's own delay causing the need for resettlement, Duke has now disavowed any obligation to correct this situation by claiming that without unanimous support for resettlement there is nothing they can do.

19. As a result, Duke has provided Certified Supplier Services to Direct that are unreasonable, unjust, unjustly discriminatory, and unjustly preferential. Duke's metering has produced inaccurate results, and Duke has transmitted this inaccurate data to PJM. As a result, Direct was not able to accurately bill its customer and Direct has been overbilled by PJM in the amount of millions of dollars. The result places Direct at a competitive disadvantage by aggravating its customer relationship and increasing its costs unfairly. Direct has overpaid millions in PJM charges due to Duke's failure to accurately meter and resolve meter errors in a timely manner. This result is patently unreasonable, unjust, unjustly discriminatory, and unjustly preferential. Accordingly, the Commission should grant Direct's Complaint pursuant to R.C. 4905.26, following a hearing, to the extent necessary.
20. These same circumstances constitute a violation of R.C. 4905.32, which requires public utilities to provide services in accordance with their tariffs on file with the Commission and in a uniform manner. By providing inaccurate metering services to Direct, Duke has failed to provide Certified Supplier Services in the manner required by law.
21. Similarly, Duke's actions violate R.C. 4928.35(C). This provision dictates that Duke make "the unbundled distribution components [of] . . . electric distribution service . . . available to all retail electric service customers in the electric utility's certified territory

and their suppliers on a nondiscriminatory and comparable basis on and after the starting date of competitive retail electric service.” (Emphasis added.) Duke’s provision of metering services under the Supplier Tariff has been discriminatory and non-comparable.

REQUEST FOR RELIEF

Wherefore, Direct respectfully requests that, pursuant to R.C. 4905.26 and R.C. 4928.16(B), the Commission issue an order:

- A. Directing Duke to immediately submit corrected meter data to Direct and to PJM with respect to Direct’s customer loads for the January 2013 through February 2013 period, directing Duke to initiate resettlement with PJM for that period, directing all affected CRES providers to consent to resettlement, and further directing Duke to provide Direct and PJM with timely accurate meter data going forward.
- B. As an alternative to resettlement, directing Duke to pay restitution to Direct in the amount of approximately \$2 million, the exact amount to be proven in this proceeding, no later than thirty days following the issuance of the Commission’s order, as compensation for the effect of Duke providing inaccurate meter data to PJM and failure to timely resettle such inaccurate data in relation to Direct’s customer SunCoke.

Direct is a customer of Duke’s consuming unbundled non-competitive retail electric services under Duke’s Certified Supplier Tariff. This Complaint has been properly brought pursuant to, *inter alia*, R.C. 4928.16(A)(2), which grants the Commission jurisdiction under R.C. 4905.26 “to determine whether an electric utility has violated or failed to comply with any provision of sections 4928.01 to 4928.15, any provision of divisions (A) to (D) of section 4928.35 of the Revised Code, or any rule or order adopted or issued under those sections.” R.C. 4928.16(A)(2). R.C. 4928.35(C) requires that Duke provide the unbundled distribution

components of electric distribution service on a nondiscriminatory and comparable basis and Duke has failed to do so. Accordingly, the Commission has authority to order restitution under R.C. 4928.16(B)(1), which provides such restitution authority "in any complaint brought pursuant to division (A)(1) or (2) of this section." See *Edward J. Santos v. Dayton Power and Light Co.*, Opinion and Order, Case No. 03-1965-EL-CSS at 17 (Mar. 2, 2005) ("In our review, we shall determine if DP&L's action in this case constitutes a violation of any of these subdivisions or the Commission's rules adopted pursuant to these subdivisions. Upon finding a violation, we may have grounds to award damages to the complainant.").

Additionally, the Commission has cited R.C. 4928.11 as statutory authority for its metering rules in Ohio Adm. Code 4901:1-10-05. See notes accompanying Ohio Adm. Code 4901:1-10-05. Therefore, Ohio Adm. Code 4901:1-10-05 is a rule adopted under the sections specified in 4928.16(A)(2), the violation of which empowers the Commission to award restitution pursuant to R.C. 4928.16(B)(1). Accordingly, Duke's violation of the Commission's metering standards provides an alternative basis upon which the Commission may award restitution to Direct.

C. Directing Duke to pay Direct additional restitution in the amount of \$383 per day, from March 1, 2013 through the date Direct is made whole for excess PJM charges, either by way of refund from PJM or by restitution from Duke, to compensate Direct for Direct's cost of capital stemming from the PJM overcharges.

D. Directing Duke to pay Direct additional restitution in the amount of its attorneys' fees and costs stemming from this Complaint proceeding and the resolution of the underlying issues.

E. Directing Duke to immediately take all necessary steps to identify the underlying root causes of the metering errors described above and to institute a plan to ameliorate its metering

service deficiencies at its own expense, including timely resettlement of errors to avoid the need for unanimous consent in the future.

F. Directing that Duke pay a penalty, pursuant to R.C. 4905.54, for the inadequate service that Direct experienced, in an amount up to \$10,000 for each day that Duke has provided inadequate and discriminatory service, multiplied by the number of violations that the Commission finds have occurred.

Respectfully submitted,

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/s/ Gerit F. Hull
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Counsel for Direct Energy Business, LLC

Dated: July 22, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing filing has been served upon the below-named person via regular U.S. Mail Service, postage prepaid, this 22nd day of July, 2014.

/s/ Gerit F. Hull
Gerit F. Hull

Service List

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in

Case No(s). 14-1277-EL-CSS

Summary: Application - Complaint of Direct Energy Business, LLC, Complainant, against Duke Energy Ohio, Inc., Respondent, electronically filed by Mr. Gerit F. Hull on behalf of Direct Energy Business, LLC

Direct Energy
Case No. 14-1277-EL-CSS
Duke Energy Ohio
First Set of Discovery Requests

DEO-INT-01-021

REQUEST:

Please describe with specificity the process in place at Direct Energy in January 2013 for receiving and reviewing preliminary information from PJM.

RESPONSE:

Objection; see General Objections. Without waiving said objections and to the extent discoverable and in the spirit of discovery, answering further as follows:

Receiving Settlement information from PJM:

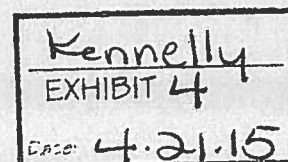
According to PJM's Weekly Billing Implementation Summary (<http://www.pjm.com/markets-and-operations/market-settlements/msrs-reports.aspx>), "Weekly billing statements will be issued each Tuesday and will include month-to-date settlement results through the previous Wednesday for the specified PJM billing line items." Monthly settlement invoices and settlement files are published on the 5th workday for the previous month. Monthly billing statements will include the entire month of settlement results for all PJM billing line items, including previous month billing adjustments, with the amount due to PJM (or due to the customer) being offset by the most recent month-to-date weekly billing amount.

❖ Each Tuesday morning, the Direct Energy settlement analysts obtain the PDF versions of the settlement invoices that were published in the PJM MSRS Reports system for the previous week as stated per the dates on the PJM Weekly Billing Calendar.

❖ Direct Energy owns a license for nMarket_PJM for Trade Manager, Operation Manager, Information Manager, Configuration Manager, and Settlement Manager. An XML interface between nMarket_PJM and the PJM MSRS system automatically retrieves and stores all published PJM Settlement data files used in settlement calculations for each of Direct Energy's registered market participants in the nMarket_PJM database.

Reviewing preliminary information from PJM:

❖ Direct Energy, LLC has a four-step process to verify amounts billed by market participant:



- Step 1: We manually print and review each PDF Settlement invoice due and/or credits to be received by Direct Energy business units (BU). We place those individual invoice totals by market participant in an excel summary sheet to verify amount due or to be received.
- Step 2: We run a macro to place the csv settlement data into excel templates by charge type grouping (DA Energy, RT Energy, Transmission, Capacity, and Auction Revenue Rights, and other settlement charges) and compare the totals as billed on the settlement invoices to the totals per the PJM csv files.
- Step 3: We run the respective load extracts in nMarket_PJM which contain the Initial Load, DA and RT Energy volumes and LMP (Prices), Load Imbalances, and congestion charges. We review for missing prices and volumes. We next export the data from nMarket_PJM and place it into the excel templates in Step 2.
- Step 4: After all the PJM csv settlement data is loaded into the excel templates as well as the Load Extracts, the Settlement Analysts will compare the PJM Spot Market file volumes and dollars to the Load Extract from the nMarket_PJM system and review for variances. If there are variances, the Settlement Analysts will ask nMarket Support to re-pull the Load Extracts and then re-load them into excel for further comparison.

Please note that nMarket_PJM is an internal system to Direct Energy and PJM MSRS system is an external system to Direct Energy.

PERSON RESPONSIBLE: Robert Kennelly

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in

Case No(s). 14-1277-EL-CSS

Summary: Deposition Duke Energy Ohio filing Deposition of Robert Kennelly part 2 of 2 electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and Spiller, Amy B and Watts, Elizabeth H