

FILE

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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**Direct Energy Business, LLC,**

**Complainant,**

**v.**

**Duke Energy Ohio, Inc.,**

**Respondent.**

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

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**REPLY OF DUKE ENERGY OHIO, INC.,  
TO  
MEMORANDUM CONTRA MOTION TO STRIKE OF  
DIRECT ENERGY BUSINESS, LLC**

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Direct Energy Business, LLC, (Direct Energy) contends that it is confused – that it does not know what should be stricken from its post-hearing brief. But the request is quite simple when one considers the allegations as raised by Direct Energy and its desire to gloss over those allegations and attack Duke Energy Ohio, Inc., (Duke Energy Ohio) for matters immaterial to those allegations.

The issues in this case are limited to those between Direct Energy, a competitive retail electric service provider and Duke Energy Ohio. The issues do not extend to any retail customers of Duke Energy Ohio, as evident from the named complainant, the causes of action, and the request for relief, all of which are found in the complaint. It is this pleading, drafted by Direct Energy, that must form the basis of the Commission's decision here. Notably, in its Initial Post-Hearing Brief, Direct Energy conceded that its initial pleading had been mediocre and suggested that the Commission ignore the customer-specific regulations it first claimed were violated by

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Duke Energy Ohio and instead focus on whether Duke Energy Ohio provided adequate service.<sup>1</sup> But in argument, Direct Energy did not limit its comments to its newly redefined allegations against Duke Energy Ohio. Rather, it sought to prejudice the Commission against Duke Energy Ohio by addressing, at length, circumstances that purportedly occurred *after* those events relevant to the disputed claims at issue herein. What should be stricken, therefore, are those portions of Direct Energy's initial post-hearing brief that inject commentary regarding Duke Energy Ohio's billing relationship with a retail customer that is not a party to this proceeding. Such unwarranted comments have no evidentiary significance relative to Direct Energy's claims and thus must be viewed for their intended purpose – to inappropriately bias the Commission against Duke Energy Ohio.

Instead, what the Commission must focus on is that:

- Procedurally, the jurisdiction over this PJM-related issue is with FERC, not the Commission. And, even if the Commission had jurisdiction, which it does not, it has no authority to award monetary damages.
- Substantively,
  - Direct Energy specifically waived any right to confirm billing data submitted to PJM.
  - The hold harmless provision in the Supplier Tariff is enforceable and as a valid provision bars Direct Energy's complaint.
  - Duke complied with its certified supplier tariff and is entitled to be held harmless thereunder for functions provided as an agent of Direct Energy for purposes of wholesale market settlement.
  - Duke Energy Ohio has not been unjustly enriched by any purported overpayments to PJM.

Direct Energy's arguments, in its Brief, relating to events that could only have occurred subsequent to the disputed issues, must be stricken.

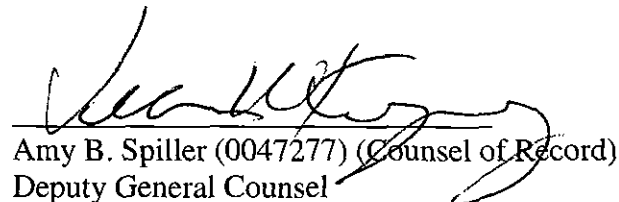
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<sup>1</sup> Direct Energy Initial Post-Hearing Brief, at pg. 8 (August 11, 2017).

For the reasons stated herein and its Merit Brief and Reply Brief, Duke Energy Ohio asks that the Commission strike, or at least ignore as irrelevant, Direct Energy's arguments relating to the enrollment of SunCoke in consolidated billing in 2014, which transpired more than a year after the facts giving rise to this complaint. Duke Energy Ohio further respectfully requests that the Commission issue an order finding that it lacks jurisdiction over the complaint or, in the alternative, that the complaint must be dismissed with prejudice as Direct Energy has failed to sustain its burden of proof.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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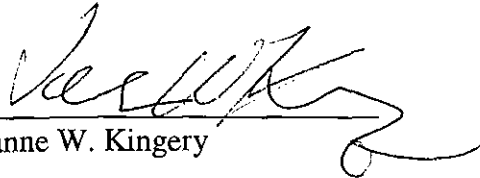
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply to Memorandum Contra of Complainant, Direct Business, LLC, by Respondent, Duke Energy Ohio, Inc., was served on the following parties this 25<sup>th</sup> day of September 2017, by regular mail or electronic delivery.

  
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