

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Investigation of Ohio's Retail Electric)	Case No. 12-3151-EL-COI
Service Market.)	
 In the Matter of the Market Development)	 Case No. 14-2074-EL-EDI
Working Group.)	

**APPLICATION FOR REHEARING OF INTERSTATE GAS SUPPLY, INC. AND
DIRECT ENERGY SERVICES LLC AND DIRECT ENERGY BUSINESS LLC AND
MEMORANDUM IN SUPPORT**

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**APPLICATION FOR REHEARING OF INTERSTATE GAS SUPPLY, INC. AND
DIRECT ENERGY SERVICES LLC AND DIRECT ENERGY BUSINESS LLC**

On February 7, 2018, the Public Utilities Commission of Ohio (Commission) issued a Finding and Order (Order) authorizing each electric distribution utility to implement “seamless move” for customers that change their residence within a service territory. The Order, however, rejected proposals to implement the “warm transfer” process contained in the Market Development Working Group Staff Report (Staff Report), as well as Ohio Power Company’s (Ohio Power) alternative warm transfer process.

Interstate Gas Supply, Inc. (IGS Energy or IGS) and Direct Energy Services LLC and Direct Energy Business LLC (Direct) appreciate the Commission’s efforts to implement seamless move, which will reduce barriers to competition for customers already engaging with a retail supplier. But the Commission’s failure to adopt the warm transfer process proposed by Ohio Power misses an important opportunity to increase customer education and expand engagement with the competitive market for new customers.

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (“O.A.C.”), IGS and Direct respectfully submits this Application for Rehearing of the Order issued by the Commission on February 7, 2018 for the following reasons:

1. The Order unlawfully, unjustly, arbitrarily, and unreasonably failed to adopt Ohio Power Company's proposal to implement a warm transfer process, including the standard discount rate option referral program.

- a. The Order rejected the warm transfer process proposed in the Staff Report, but the Order failed to address Ohio Power's proposed alternative warm transfer process. Thus, the Order failed to address positions asserted by IGS, Direct, Retail Energy Supply Association, and Ohio Power recommending approval of a warm transfer process in violation of R.C. 4903.09. R.C. 4903.09 requires the Commission to provide "findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact."
- b. The Order unjustly and unreasonably failed to adopt the warm transfer process without explanation. To the extent additional information is required, the Commission should have directed that interested parties further explore the feasibility of the warm transfer process, including the standard discount option referral program.
- c. The warm transfer process proposed by Ohio Power Company is the product of a Stipulation and Recommendation in Case Nos. 14-1693-EL-RDR. The Order's rejection of this proposal unjustly and unreasonably undermines parties' willingness to enter into settlements.

IGS and Direct urge the Commission to grant this application for rehearing and to correct the errors identified herein.

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MEMORANDUM IN SUPPORT

I. BACKGROUND

On December 12, 2012, the Commission opened a proceeding to investigate the health, strength, and vitality of the retail electric service market (the COI Case). On January 16, 2014, in the COI Case, the Commission's Staff filed a status report and a market development work plan (the COI Work Plan), which included Staff recommendations to improve Ohio's retail market. On March 26, 2014, the Commission issued its Finding and Order in the COI Case (COI Order) adopting, in part Staff's recommendations in the COI Work Plan, with modifications.

The COI Order also created the Market Development Working Group (MDWG). The Commission then directed the MDWG and Staff to develop an operational plan to implement a statewide seamless move, contract portability, instant connect, or warm transfer process. After that process was developed, the Commission directed the Staff to file a Staff Report in a separate case, including recommendations regarding implementation of seamless move, contract portability, instant connect, and warm transfer. The Staff Report was ultimately filed in Case No. 14-2074-EL-EDI on July 15, 2015.

The warm transfer process proposed in the Staff Report addressed “the ability of the EDU to complete a three-way call with the CRES provider and customer to initiate CRES enrollment.”¹ Staff’s process focused on enrollment and education:

A Warm Transfer will allow customers to complete a transfer of service with one call and with all necessary information. As discussed during the MDWG discussions, prior to a Warm Transfer the EDU will provide all choice customers with education regarding their supplier options. The MDWG will develop a script for the EDU representative to explain the customer's options, which will include SSO default service, the "Energy Choice Ohio" website, or transfer to their current CRES provider.²

Based upon its low cost of implementation, the Staff Report recommended approval of this process.

In parallel with efforts of the MDWG, certain parties—including IGS, Direct, and Ohio Power—continued to identify methods to enhance the competitive retail electric market. To that end, as part of the Stipulation and Recommendation in Case Nos. 14-1693-EL-RDR, *et al.*, Ohio Power agreed to propose a pilot program for Commission consideration through a third-party call transfer system:

AEP Ohio will file a proposal for a pilot program in the comments due January 6, 2016, in the 12-3151-EL-COI docket. The proposal will be to establish a pilot program in the AEP Ohio service territory providing an EDU third-party agent call transfer process to educate and enroll interested customers moving and initiating service and to establish a procedure for the offering of a standard discount rate providing a guaranteed discount off the price to compare without early termination fees.³

In furtherance of its Stipulation obligation, Ohio Power offered the above proposal in lieu of the warm transfer process proposed in the Staff Report. The proposal was markedly different than the Staff Report proposal inasmuch as it contained a referral program and a third-party transfer

¹ Staff Report at 9.

² *Id.*

³ *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR, *et al.*, Stipulation and Recommendation at 19 (Dec. 14, 2015).

process. As discussed in more detail in Ohio Power's Comments, the proposal would provide significant benefits to customers, including further customer education and a guaranteed discount off the price to compare for a set term:

By utilizing a third party agent as proposed, a standard discount rate option for residential and small commercial customers can be offered for participating CRES providers, where customers not familiar with shopping can be introduced to Choice through a basic percentage off price-to-compare (PTC), with no early termination fees. This option may be offered to interested customers on the phone with the third party agent. Terms of the discount rate would be developed with the PUCO staff and interested CRES providers, and provisions of the rate would be posted on the PUCO's Apples-to-Apples website. Working with Staff to develop details of standard discount rate can include such customer protections as no early termination fees, standard length of time the PTC offer lasts, ensuring a fixed rate remains after the initial contract term ends, and customer notification and options when the initial PTC contract rate expires. Customers opting into the standard discount rate option would be randomly assigned to participating CRES providers by the third party agent. The standard discount rate increases the options customers have in the Ohio electric Choice market, and provides a low-risk introduction to shopping for customers interested in participating in Choice. The standard discount rate option also offers an excellent opportunity to educate residential and small commercial customers while supporting competition among CRES providers.⁴

This proposal was strongly supported by CRES providers (IGS and Direct).⁵ It was also supported by RESA: "The pilot proposal is a step in the right direction inasmuch as it would provide an incremental improvement relative to the status quo, enhancing the ability of the moving customers to retain their CRES providers, increasing customer education regarding shopping opportunities for all customers, and providing guaranteed savings to customers through a standard discount option."⁶

On February 7, 2018, the Commission issued a Finding and Order authorizing each electric distribution utility to implement seamless move for customers that change their residence

⁴ Ohio Power Initial Comments at 7 (Jan. 6, 2016) (footnote removed).

⁵ Reply Comments of Interstate Gas Supply, Inc. at 1-2 (Jan. 20, 2016); Reply Comments of Direct Energy Services, LLC and Direct Energy Business, LLC at 3-4 (Jan 20, 2016).

⁶ Reply Comments of the Retail Energy Supply Association at 5 (Jan. 20, 2016).

within a service territory. The Order, however, rejected proposals to implement the warm transfer process contained in the Staff Report, as well as Ohio Power's alternative warm transfer process, including the standard discount option. The Order's conclusion regarding the warm transfer process is limited to one paragraph:

The Commission finds that warm transfer should not be adopted. The warm transfer process was not discussed in as much detail as the other processes during MDWG discussions and has its own difficulty in implementation as explained by the EDUs and specifically by AEP through its trunk looping discussion. Further, warm transfer garnered little support within the MDWG. Suppliers and consumer groups panned the approach, and the EDUs were not overwhelmingly supportive either. Additionally, warm transfer requires substantial time and effort for the customer, thereby creating disincentive for the customer to continue shopping, a concept that is antithetical to the very reason that the COI Case was initiated.⁷

Although the Order's preceding paragraphs acknowledged that Ohio Power proposed an alternative warm transfer process, the Order failed to provide any substantive discussion of whether that proposal should move forward or evaluated further. Instead, the Order leaves parties with the impression that Ohio Power's proposal, including the standard discount option, was implicitly rejected without reason. Because the warm transfer process proposed by Ohio Power has merit, IGS and Direct request that the Commission grant rehearing and correct the errors identified below. Or in the alternative, on rehearing, the Commission should clarify that the Order was not intended to prejudge the warm transfer process proposed by Ohio Power and that parties should provide a more detailed proposal in a subsequent filing.

II. ARGUMENT

- A. The Order unlawfully, unjustly, arbitrarily, and unreasonably failed to adopt Ohio Power Company's proposal to implement a warm transfer process, including the standard discount rate option referral program.**
 - a. The Order rejected the warm transfer process proposed in the Staff Report, but the Order failed to address Ohio Power's proposed alternative warm transfer process. Thus, the Order failed to address positions**

⁷ Order at 12.

asserted by IGS, Direct, Retail Energy Supply Association, and Ohio Power recommending approval of a warm transfer process in violation of R.C. 4903.09. R.C. 4903.09 requires the Commission to provide "findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact."

- b. The Order unjustly and unreasonably failed to adopt the warm transfer process without explanation. To the extent additional information is required, the Commission should have directed that interested parties further explore the feasibility of the warm transfer process, including the standard discount option referral program.**

R.C. 4903.09 requires the Commission to provide "findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." "The purpose of R.C. 4903.09 is to provide the court with sufficient details to enable it to determine how the commission reached its decision." *Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St. 3d 202, 209 (1994) (citing *General Telephone Co. v. Public Utilities Commission of Ohio*, 30 Ohio St. 2d 271 (1972)). As discussed below, the Order violated R.C. 4903.09.

Two warm transfer processes were proposed in this proceeding: one by the Staff Report; one by Ohio Power. The Order, however, only addressed the former—in its ultimate conclusion as well as the reasoning through which that conclusion was reached. Specifically, the following statements relate to the warm transfer process contained in the Staff Report:

- "The warm transfer process was not discussed in as much detail as the other processes during MDWG discussions and has its own difficulty in implementation as explained by the EDUs and specifically by AEP through its trunk looping discussion."⁸ Indeed, Ohio Power identified that its proposal would avoid the trunk looping issue the Staff proposal would have created.⁹

⁸ Order at 12; Staff Report at 9; Ohio Power Initial Comments at 8-9 (responding to Staff Report).

⁹ Ohio Power Initial Comments at 8-9.

- “Further, warm transfer garnered little support within the MDWG.”¹⁰ Ohio Power’s proposal was not discussed during the MDWG—it did not yet exist at the time the group met.
- “Suppliers and consumer groups panned the approach, and the EDUs were not overwhelmingly supportive either.”¹¹ This statement related to the Staff Report; Ohio Power’s proposal was universally supported by all CRES providers and RESA. No other EDU opposed Ohio Power’s proposal.
- “Additionally, warm transfer requires substantial time and effort for the customer, thereby creating disincentive for the customer to continue shopping, a concept that is antithetical to the very reason that the COI Case was initiated.” This statement also relates to the Staff Report. Although the Ohio Power proposal could have permitted transfer of an existing contract, the main focus of the proposal was educating customers and providing additional customer engagement in the competitive market—customers that are not currently shopping through the standard discount option.

Accordingly, the Order contains no substantive discussion of Ohio Power’s proposed warm transfer process. The Order is unlawful and unreasonable in that respect.

On rehearing, the Order should provide a substantive evaluation of Ohio Power’s proposal. That being said, IGS and Direct acknowledge that Ohio Power’s initial proposal contemplated parties meeting and convening to determine more specific details of the warm transfer process and standard discount program; thus, additional information may be needed before the Commission may provide a more thorough evaluation of this proposal. Therefore, at a minimum, the

¹⁰ Order at 12.

¹¹ Order at 12.

Commission should clarify and direct that interested parties convene and propose in a separate docket a warm transfer process consistent with Ohio Power's proposal for Commission review.

- c. The warm transfer process proposed by Ohio Power Company is the product of a Stipulation and Recommendation in Case Nos. 14-1693-EL-RDR. The Order's rejection of this proposal unjustly and unreasonably undermines parties' willingness to enter into settlements.**

Through settlements, parties may comprehensively resolve several contentious issues. Settlements often strike a delicate balance to avoid litigation and extensive appeals. No party would agree to a stipulation absent the package. The warm transfer process rejected by the Commission was part of a package. Indeed, the Commission relied upon the standard discount option (referral program) discussed above and other retail enhancements as benefits of the stipulation in Case Nos. 14-1693-EL-RDR. Although the Commission did not explicitly approve the warm transfer process in Case Nos. 14-1693-EL-RDR, the Commission acknowledged its potential benefit and assured parties that the proposal would be based upon a holistic evaluation of its merits:

[T]he stipulation also includes numerous commitments by AEP Ohio to offer proposals in future proceedings that are intended to promote economic development and retail competition . . . Initially, the Commission notes that, because these proposals are subject to further review in future proceedings, our recognition of the benefits of the proposals should not be construed as a predetermination of the outcome of those future proceedings, which will be decided based upon the record in each case. Rather, at this point in time, we find value for customers in AEP Ohio's commitment to bring these proposals before the Commission for further consideration (Tr. XIX at 4870).¹²

That evaluation simply did not occur in this case. The outright rejection of the warm transfer process without analysis undermines the willingness of parties to settle.

¹² *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR, *et al.*, Opinion and Order at 84 (Mar. 31, 2016).

III. CONCLUSION

For these reasons, IGS and Direct respectfully request that the Commission grant this application for rehearing and correct the errors identified herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served by electronic mail this 9th day of March, 2018 to the following:

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Summary: Application for Rehearing electronically filed by Ms. Rebekah J. Glover on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC and Interstate Gas Supply, Inc.