

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review :  
of the Minimum Gas Service Standards in : Case No. 19-1429-GA-ORD  
Chapter 4901:1-13 of the Ohio :  
Administrative Code. :

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**REPLY COMMENTS OF DIRECT ENERGY SERVICES, LLC  
AND DIRECT ENERGY BUSINESS MARKETING, LLC**

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**I. INTRODUCTION**

Direct Energy Services, LLC and Direct Energy Business Marketing, LLC (collectively “Direct Energy”) appreciate the opportunity to submit comments in response to initial comments submitted on Staff’s proposed amendments to Ohio Adm.Code Chapter 4901:1-13. Direct Energy respectfully requests that the Commission adopt the feedback provided in its initial comments and the reply comments set forth below.<sup>1</sup>

The Office of the Ohio Consumers’ Counsel’s (“OCC”) initial comments reflect a continued objection to the advancement of Ohio’s competitive markets and a disregard for the State’s policy to promote the development of the competitive retail natural gas service (“CRNGS”) markets. The Commission should reject OCC’s attempts to limit and restrict the development of the competitive market and its laser focus on utilizing the provider of last resort and default service pricing as the benchmark for evaluating offers from CRNGS suppliers. Focusing solely on the default service as the benchmark for evaluating supplier offers is misleading. Direct Energy objects to OCC’s proposals to: (1) revise Staff’s proposed price to compare statement; (2) mandate shadow billing; (3) require utilities to provide default service and supplier rate comparisons when a customer moves; and (4) require the utility provided

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<sup>1</sup> Direct Energy’s initial and reply comments are submitted in accordance with the schedule established in the Entry issued on December 18, 2019.

customer rights and obligations summary to include information on how to compare a supplier's rate to the utility's default service price. As explained below, there are various flaws associated with using the default service price as the benchmark for evaluating competitive supplier products.

In regards to Staff's proposal to limit the types of charges that can be included on natural gas bills, Direct Energy objects to OCC's proposed definition of the term "commodity charge." Limitations on the types of charges that can be included on natural gas bills will stifle the competitive market and, as noted by several parties, what is commodity versus non-commodity can have far reaching consequences if not properly defined. A better approach to this issue would be for the Commission to hold a workshop to define non-commodity products and services and to promote the diversity of products in the market.

Lastly, Direct Energy disagrees with the Northeast Ohio Public Energy Council's ("NOPEC") proposal for a uniform rescission letter for governmental aggregation customers. If the Commission adopts NOPEC's proposal, Direct Energy encourages the Commission to incorporate the feedback in these reply comments regarding NOPEC's template uniform rescission letter.

## **II. REPLY COMMENTS**

### **A. Default Service Price to Compare Statement on Bills**

The OCC advocates that Staff's proposed price to compare ("PTC") statement<sup>2</sup> should be revised as follows:

In order for you to save money, a ~~by selecting a~~ competitive retail natural gas supplier would have to offer you a rate that is lower than ~~provider~~, your price to compare, which is the standard choice offer (SCO) rate or the gas cost recovery (GCR) rate, is (dollar

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<sup>2</sup> Staff Proposed Amendments to Ohio Adm.Code 4901:1-13-11.

amount per Mcf) for this billing month. The SCO rate or GCR rate is approved by the public utilities commission.<sup>3</sup>

The Commission should reject Staff's proposed PTC statement and OCC's recommended edits to the statement. As expressed in initial comments made by various stakeholders in this proceeding, the proposed PTC statement is fundamentally misleading.<sup>4</sup> OCC's edits do not cure the misleading nature of the PTC statement and OCC's support for and edits to the statement should be disregarded.

The standard choice offer ("SCO") rate and, in the case of Duke Energy Ohio, the gas cost recovery ("GCR") rate, are variable rates that change every month, depending on the market price of natural gas. As proposed, the PTC statement would encourage customers to compare a current supplier's offer with the "expired" SCO or GCR rate from the prior month. The statement is misleading as customers cannot receive the prior month's SCO or GCR rate and, due to volatility in the natural gas market, the SCO and GCR rates have no guarantee and most likely will not be the same rates at the time a customer makes a rate comparison. In other words, an "expired" SCO or GCR rate is not an accurate benchmark by which a consumer can determine whether he or she will save money in future months by selecting a supplier. Moreover, a pure rate comparison to the SCO or GCR does not take in to consideration various products and services a supplier may be offering a consumer or what price the consumer is currently paying.

The proposed PTC statement is also misleading as it could lead customers to conclude that the utility's default service is somehow stable, superior or protected because it is "approved" by the Commission. OCC made no attempt to correct that flaw in its recommended edits.

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<sup>3</sup> OCC Initial Comments at 3.

<sup>4</sup> Interstate Gas Supply, Inc. Initial Comments at 13-14; Retail Energy Supply Association ("RESA") Initial Comments at 2-4; The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) and Vectren Energy Delivery of Ohio, Inc. (VEDO) Initial Comments at 3-4; Northeast Ohio Public Energy Council's Initial Comments at 3-4.

Staff’s statement that the PTC is “approved” by the Commission, if used by a supplier to describe a product, would be considered misleading under O.A.C. 4901:1-29-05(D).

As explained more fully in Direct Energy’s initial comments, the proposed PTC statement would provide an unfair advantage to the utility. By detailing that “[t]he SCO rate or GCR rate is approved by the public utilities commission,” the statement inappropriately leads customers to assume the rate is capped or price protected. It also reflects Commission endorsement of the default service product in a way that the Commission would not do for any competitive supplier’s product. OCC’s proposed PTC statement clearly departs Ohio’s policies to promote “diversity of natural gas supplies and suppliers”<sup>5</sup> or the “availability of...comparable natural gas services and goods.”<sup>6</sup>

For the reasons set forth above, Direct Energy objects to the inclusion of the PTC statement (with or without OCC’s recommended edits). To highlight the PTC on a customer’s bill (and tout it as “approved” by the Commission) would only serve to mislead customers and provide an unfair advantage to the utility.

## **B. Shadow Billing**

Direct Energy opposes OCC’s proposal that the Commission mandate natural gas utilities to conduct shadow billing.<sup>7</sup> OCC would have utilities compare “the difference between what shopping customers paid for natural gas through marketers and what the customer would have paid had they been served through the utility standard choice offer or gas cost recovery rate.”<sup>8</sup> OCC’s proposal would have the utility create a shadow bill for each shopping customer and require the utility to file an annual report with the Commission detailing aggregated customer

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<sup>5</sup> Ohio Rev. Code Ann. § 4929.02(A)(3).

<sup>6</sup> Ohio Rev. Code Ann. § 4929.02(A)(2).

<sup>7</sup> OCC Initial Comments at 3-4.

<sup>8</sup> OCC Initial Comments at 3-4.

savings or losses experienced as a result of shopping in the CRNGS market. OCC incorrectly asserts that shadow-billing data will determine total savings and total losses for customers participating in gas choice programs.<sup>9</sup>

Aside from the confusion created by receiving two “bills,” comparing a utility’s SCO or GCR rate to a supplier’s rate is not a useful analysis in measuring whether shopping customers experienced savings or losses. The OCC is promoting an assumption that a customer switches solely based on savings compared to the SCO or GCR rather than choices based on diversity of products, technologies, and incentives that create monetary value not shown in the OCC shadow billing approach. The analysis ignores the wide range of products and services tailored to meet the individual needs of consumers. Some customers are motivated by loyalty programs or other value-added benefits, such as energy efficiency offerings. The value of those programs and benefits is not reflected in the comparison of a supplier rate to the SCO or GCR.

Second, an annual snapshot of the SCO or GCR to supplier rates may not accurately capture cost savings to customers. For example, at one point in Ohio there was a supplier offering a product with a rebate if certain savings were not achieved – that product is just one example of a product which would show a ‘loss’ in OCC’s view when the customer actually had a ‘gain’.

Third, some customers will choose to shop to obtain additional price certainty from a fixed price offer. The price “insurance” has a tangible benefit for consumers even if they end up paying more overall. Even though a customer may pay more than the default service rate over an annual period, they still receive the benefit of a fixed price product which protects them from volatility in the natural gas market. Analysis of the total market should not be based on a single

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<sup>9</sup> OCC Initial Comments at 4.

flawed data comparison. As the state policy is to promote diversity of products and options for customers, any cost or savings analysis on an individual or aggregate basis must factor in the value-added products and services and other tangible benefits offered by suppliers.

Direct Energy submits that shadow-billing would inaccurately define the market, discourage customer shopping, and paint a public perspective of the market which ignores the diverse options available to customers. A simplistic price comparison that uses the default service price as the sole metric for determining whether a supplier offers what a customer views as valuable to their home or business is nonsensical. In lieu of the shadow billing proposed by OCC, the Commission should direct customers to the Commission's energy choice website for information on the default service price and CRNGS rate offers available. The Apples to Apples Comparison Charts available on the Commission's energy choice website appropriately enable customers to compare diverse products available in the market and a variety of information beyond the monthly rate. Directing customers to the Commission's energy choice website also aligns with Ohio's policies to promote: (1) the availability of natural gas services and goods; (2) the diversity of natural gas supplies; and (3) innovation and market access.<sup>10</sup>

### **C. Contract Portability**

OCC proposes that the contract portability<sup>11</sup> provisions proposed by Staff in Ohio Adm. Code 4901:1-13-12(H) be amended to require utilities to "inform customers about the rate they paid for natural gas through the supplier for each of the previous twelve months compared to the

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<sup>10</sup> Ohio Rev. Code Ann. § 4929.02(A)(2)-(4).

<sup>11</sup> Staff proposes to define the term "contract portability" as "the ability of a gas or natural gas company to allow a retail natural gas supplier to maintain contracts with customers that move to another address within the gas or natural gas company's service territory." Ohio Adm. Code 4901:1-13-01. Direct Energy does not object to the Farm Bureau Federation's proposed expansion of the definition of "contract portability" to include additional service locations or instances where additional meters are required due to expansion so long as the supplier contract permits the portability.

utility standard choice offer (SCO) or gas cost recovery (GCR) rate.”<sup>12</sup> In addition, OCC seeks to prevent the continuation of service from a supplier at the customer’s new address unless the customer provides affirmative consent to transfer the account number.<sup>13</sup> The OCC would create an opportunity for utilities to insert themselves between a customer and supplier and, in essence, market the default service product to customers when a customer moves.

As explained in II.A. and B. above, comparing the historical SCO or GCR rate to a supplier’s rate is not an apples to apples comparison and the use of that simplistic price comparison is misleading to customers. OCC asserts that it is unfair to customers to transfer “bad market contracts that are harmful for consumers from one address to another.”<sup>14</sup> OCC appears to denounce contracts that customers entered into with a supplier even though the customer found value in the product and services offered. While OCC may only value the monthly rate of the SCO or GCR product, customers value a wide range of products and value-added benefits. Setting aside the fact that contract portability has existed in some utilities for over a decade, OCC’s proposal would put utilities in the position of encouraging customers to breach their existing contracts with suppliers, through comparison of solely the historical SCO or GCR rate to the supplier’s rate.

OCC claims that its proposal is to ensure that consumers are “fully informed of their rights and the consequences of their gas supply choices when they move.”<sup>15</sup> However, OCC’s objective to promote the default service product is transparent. If OCC wanted to ensure customers were “fully informed,” it would require the utility to provide only unbiased

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<sup>12</sup> OCC Initial Comments at 9.

<sup>13</sup> OCC Initial Comments at 8.

<sup>14</sup> OCC Initial Comments at 9.

<sup>15</sup> OCC Initial Comments at 8.

information regarding the Commission's energy choice website, where a fair comparison of numerous supplier offers and the SCO and GCR rates can be made.

OCC claims that its proposal will protect consumers and cites concerns regarding slamming.<sup>16</sup> Direct Energy submits that OCC's recommended changes to the proposed contract portability language is not necessary. The Commission has numerous safeguards that protect customers from slamming and also make customers whole if slamming is found to have occurred.<sup>17</sup> If there have been any issues with slamming in the contract portability context (which Direct Energy is not aware of), the Commission should address those issues directly, not by adding unnecessary requirements for shopping customers.

Requiring the customer to contact the utility to transfer account numbers to a supplier after a move adds an extra step for a customer that has elected a competitive supplier's product. Ultimately, in the chaos of a move, a consumer may forget to provide affirmative consent to the utility, which may result in the discontinuance of service from the supplier. Requiring affirmative customer consent to transfer account numbers to a supplier so that the supplier may continue to serve a customer will undoubtedly cause customer annoyance and discourage shopping.

OCC's recommendation directly conflicts with Ohio's state policy to "promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods."<sup>18</sup> OCC's proposal would not only frustrate shopping customers when they move, but also would require misleading comparisons, elevate default service, disrupt existing supplier contracts and harm the competitive market. To avoid

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<sup>16</sup> OCC Initial Comments at 8.

<sup>17</sup> Ohio Admin. Code Rules 4901:1-29-06(B)-(E) and 4901:1-29-08(D).

<sup>18</sup> Ohio Revised Code Section 4929.02(A)(8).



the aforementioned maladies, the Commission should reject OCC's recommended edits to the contract portability language proposed by Staff.

#### **D. Written Summary of Customer Rights and Obligations**

Ohio Adm.Code 4901:1-13-06 requires each natural gas utility to maintain a handbook of customer rights and obligations. Each natural gas utility must provide a written summary of those rights and obligations on its website and to new customers upon application for service and to existing customers upon request.<sup>19</sup> The Commission's regulation currently establishes minimum information that must be provided in the summary information, such as privacy rights, meter readings, complaint procedures, etc. In its initial comments, OCC proposes that the Commission expand the utility-provided summary information to include information to help consumers assess how the price of a supplier's rate compares to their utility's rate and to provide "guidance...about what they could do if they notice that their natural gas charges are higher than the price to compare provided on the bill."<sup>20</sup> OCC also suggests that the Commission require information in the summary on "ways to avoid scams, selecting teaser rates, and the potential adverse impacts associated with certain competitive contracts such as automatic renewal provisions."<sup>21</sup>

OCC's proposed additions are inappropriate for several reasons. First, as expressed in these comments and in the initial comments made by various stakeholders in this proceeding, using default service as the sole metric for comparison to a CRNGS product is misleading and improper. As the flaws associated with using the default service price as the benchmark for

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<sup>19</sup> Ohio Adm.Code 4901:1-13-06(B).

<sup>20</sup> OCC Initial Comments at 6.

<sup>21</sup> OCC Initial Comments at 6.

evaluating competitive supplier products has been discussed ad nauseam, Direct Energy will not restate the flaws but refers the Commission to the discussions in II.A. through C above.

Second, the utility should not be providing a customer guidance about products the utility does not offer. While the customer rights and obligations summary should include information regarding the gas choice programs available to customers, the role of a utility is not to offer guidance about the competitive market. By mandating that the utility provide guidance about comparing default service to CRNGS products (and the potential “adverse impacts” of competitive contracts), the Commission would provide the utility an opportunity to discourage competition and encourage complaints against suppliers.

The Commission should ensure that its regulations are in line with state policy to promote the “diversity of natural gas supplies and suppliers”<sup>22</sup> and the “availability of...comparable natural gas services and goods.”<sup>23</sup> OCC’s proposed additions to the customer rights and obligations summary do not further either policy objective. Direct Energy would not object to the Commission requiring the summary to contain a reference to the Commission’s energy choice website, an explanation of common product types and the process and protections on switching. There is a difference between focus solely on the default service price and giving customers a full explanation of the switching process along with definitions of typical products. This ensures the language is not biased toward a particular product or supplier.

In sum, Direct Energy opposes OCC’s proposed additions to the customer rights and obligations summary as they improperly focus on the default service price as a benchmark for comparing CRNGS products and provide the utilities an opportunity to disparage the competitive market.

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<sup>22</sup> Ohio Rev. Code Ann. § 4929.02(A)(3).

<sup>23</sup> Ohio Rev. Code Ann. § 4929.02(A)(2).

### **E. Permitted Charges on Natural Gas Residential Customer Bills**

As expressed in Direct Energy's initial comments, Direct Energy opposes Staff's proposed provision that would limit the types of charges that can be included on natural gas bills. The proposed revision would expressly prohibit residential bills from including charges for anything except the utility's approved tariff charges and CRNGS commodity charges.<sup>24</sup> For clarity purposes, OCC asserts that the Commission should define the term "commodity charge" in Ohio Adm. Code 4901:1-13-01 as follows: "Commodity Charge" includes the portion of the natural gas bill that is based on the cost of the actual natural gas supplied to the customer by either the natural gas utility or competitive retail natural gas supplier.<sup>25</sup> While Direct Energy agrees that Staff's proposed provision lacks clarity, Direct Energy objects to OCC's recommended definition of the term "commodity charge."

Direct Energy opposes the definition of "commodity charge" put forth by OCC as it would allow suppliers to charge customers only for the cost of the actual natural gas commodity. In order for a supplier to make a retail natural gas product available in the market, it takes more than just the pure commodity. A cursory list of what it takes includes: (1) call center infrastructure and employees to maintain appropriate customer services; (2) outside and inside legal personnel to comply with the regulatory rules and requirements; (3) IT employees; (4) benefits and salaries for those employees; (5) administrative and human resources staff to support those employees; (6) office rent, utilities, supplies; (7) IT infrastructure; (8) accounting and auditing services; (9) printing and postage to communicate with customers; (10) payments of taxes and regulatory fees; and (11) working capital to purchase natural gas supply for customers.

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<sup>24</sup> "Natural gas residential bills are to contain only charges that are either a natural gas or competitive retail natural gas commodity charge or an approved tariffed distribution charge or service." Staff Proposed Ohio Adm.Code 4901:1-13-11(K).

<sup>25</sup> OCC Initial Comments at 11.

OCC's proposed definition would prohibit suppliers from charging customers for the aforementioned non-exhaustive list of costs incurred by suppliers to make a product available in the market and to serve customers.

The proposed rule, in conjunction with OCC's preferred definition, would give the utility full discretion to determine what rate a supplier should charge. Such a result is preposterous as the Commission does not regulate supplier rates and cannot grant utilities the ability to regulate supplier rates. If the Commission elects to consider Staff's proposal (which Direct Energy views as unnecessary and inappropriate), it should revise the proposed provision so that suppliers are permitted to include all their charges on the natural gas residential bill.

Direct Energy supports the comments of Interstate Gas Supply, Inc. ("IGS"), which demonstrate why the competitive supplier's charges should not be limited to the commodity charge when a consumer has chosen a product that includes more than the commodity.<sup>26</sup> As reflected in the comments of IGS, Pivotal Home Solutions, and HomeServe USA Corp and HomeServe USA Repair Management Corp. ("HomeServe"), thousands of Ohio customers have elected to receive non-commodity charges on their utility bill. Staff's proposed provision that would limit the types of charges that can be included on natural gas bills could potentially disrupt the status quo for customers who currently benefit from receiving non-commodity charges on their utility bill. Direct Energy agrees with IGS that the provision will harm businesses providing non-commodity products and services to Ohioans and supports its recommendation that the Commission impose additional consumer safeguards if it has concerns regarding non-commodity offerings.<sup>27</sup>

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<sup>26</sup> Initial Comments of Interstate Gas Supply, Inc.

<sup>27</sup> IGS Initial Comments at 2, 9-10.

If the Commission adopts the proposed limit on the types of charges that can be included on natural gas bills and OCC's proposed definition of "commodity charge", it will stifle the competitive market and reduce the availability of natural gas services and goods. Such a result would be contrary to the state policy to promote "diversity of natural gas supplies and suppliers"<sup>28</sup> and the "availability of...comparable natural gas services and goods."<sup>29</sup> For the reasons set forth above, Direct Energy respectfully requests that the Commission reject the proposed limit and OCC's definition of the term "commodity charge." Direct Energy suggests that the Commission hold a workshop to define non-commodity products and services and to promote the diversity of such offerings in Ohio.

#### **F. Uniform Rescission Letter**

Section 4901:1-13-14(G) currently provides that within two business days after receiving a customer's request to rescind enrollment with a supplier or governmental aggregator, the utility must initiate the rescission and inform the supplier or governmental aggregator of such action. Northeast Ohio Public Energy Council ("NOPEC") expressed concerns that the current rescission letters for governmental aggregation customers: (1) do not clearly recite that the customer is in a community that has adopted governmental aggregation; and (2) infer that the customer must provide consent for the switch to occur.<sup>30</sup> To avoid customer confusion, NOPEC proposed that the Commission adopt a uniform rescission letter to clarify that it is appropriate for the customer's aggregated community to request the switch and that the customer may rescind the enrollment.<sup>31</sup>

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<sup>28</sup> Ohio Rev. Code Ann. § 4929.02(A)(3).

<sup>29</sup> Ohio Rev. Code Ann. § 4929.02(A)(2).

<sup>30</sup> NOPEC Initial Comments at 2.

<sup>31</sup> NOPEC Initial Comments at 2.

Direct Energy understands the practicalities of a uniform rescission letter. However, NOPEC's proposal is to establish a uniform rescission letter that favors municipal aggregation as opposed to fully informing customers of their right to rescind. If the Commission decides to establish a uniform rescission letter, Direct Energy encourages the Commission to consider its recommended edits to NOPEC's proposed template gas rescission letter enclosed with its initial comments.<sup>32</sup>

First, the letter omits key information like the deadline for the customer to rescind the enrollment before the customer receives service. If the Commission adopts NOPEC's proposal, the uniform letter should contain that key information. NOPEC's proposed template letter implies that a customer in an aggregation would not be able to rescind. A customer has the right to rescind regardless of the form of enrollment.

Second, the letter implies that a customer may not leave a municipal aggregation program for a period of two years.<sup>33</sup> While the Commission's regulations establish that a customer may opt out of an aggregation at least every two years without penalty,<sup>34</sup> that does not mean a customer cannot leave the aggregation until the two years is up. Customers are always free to switch suppliers. Direct Energy recommends that any uniform rescission letter solely focus on the customer's right to rescind.

### **III. CONCLUSION**

Direct Energy respectfully requests that the Commission incorporate its feedback as set forth in its initial and reply comments regarding the CRNGS rules in Ohio Adm.Code Chapter 4901:1-13. In response to the various comments discussed above, Direct Energy strongly urges

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<sup>32</sup> Attachment A to NOPEC Initial Comments.

<sup>33</sup> Attachment A to NOPEC Initial Comments.

<sup>34</sup> Ohio Adm.Code 4901:1-28-04(A)(7).

the Commission to accept the following recommendations to: (1) reject the proposed inclusion of the price to compare statement on customer bills and OCC's recommended edits to the statement; (2) reject OCC's proposal on shadow billing; (3) not adopt OCC's contract portability proposal; (4) disregard OCC's proposed additions to the written summary of customer rights and obligations; (5) not adopt the proposed language on permitted charges on a natural gas customer bill; and (6) not adopt NOPEC's proposed uniform rescission letter for governmental aggregation customers.

Respectfully submitted,

/s/ Scott R. Dismukes

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Date: January 31, 2020

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

**Commission of Ohio Docketing Information System on**

**1/31/2020 4:18:37 PM**

**in**

**Case No(s). 19-1429-GA-ORD**

Summary: Comments Reply Comments of Direct Energy Services, LLC and Direct Energy Business Marketing, LLC electronically filed by Mr. Scott R. Dismukes on behalf of Eckert Seamans Cherin & Mellott, LLC and Clearfield, Daniel Mr. and Stoner, Sarah Ms.