BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS MARKETING, LLC
MEMORANDUM CONTRA OCC APPLICATION FOR REHEARING

I. INTRODUCTION

Direct Energy Services, LLC and Direct Energy Business Marketing, LLC (collectively "Direct Energy")[1], wholly owned subsidiaries of NRG Energy Inc.[2], submit this Memorandum Contra to arguments raised in the Office of the Ohio Consumers' Counsel's ("OCC") Application for Rehearing filed in this matter on March 26, 2021 ("Application for Rehearing"). In its February 24, 2021 Finding and Order ("Order") in this matter, the Public Utilities Commission of Ohio ("Commission") made reasonable modifications to the minimum gas service standards in Chapter 4901:1-13 of the Ohio Administrative Code. OCC unfairly criticizes the Commission for not doing more to protect consumers. OCC's Application for Rehearing fails to take in to account that: (1) adequate consumer protections are in place; (2) the Commission is required to promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers; and (3) the Commission is required to support the continuing emergence of the competitive natural gas markets through flexible regulatory treatment.[3] For the reasons described herein, Direct Energy urges the Commission to deny OCC's Application for Rehearing in its entirety.

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1 Direct Energy Business, LLC and Direct Energy Services, LLC ("Direct Energy") are retail suppliers in the state of Ohio and serve electric and natural gas customers throughout the state.
2 NRG Energy Inc. acquired the North American assets of Centrica PLC on January 5, 2021.
3 Ohio Rev. Code Ann. § 4929.02(A)(3) and (6) and (B).

By way of further background, on December 18, 2019, the Commission issued an Entry seeking comments on Staff's proposed amendments to Chapter 4901:1-13 of the Ohio Administrative Code. After consideration of comments from interested stakeholders, the Commission issued its Order finding that certain provisions of Chapter 4901:1-13 should be amended and that other provisions should be adopted with no changes. OCC's Application for Rehearing erroneously claims that the Order was unlawful or unreasonable because it: (1) declined to adopt OCC's shadow-billing proposal; (2) rejected a recommendation to define the term "commodity charge" and to amend rules to only permit charges for natural gas commodity and tariffed distribution service on residential bills; (3) declined to require the current standard choice offer or gas cost recovery rate be placed on natural gas bills; and (4) rejected a retail natural gas supplier block mechanism proposed by Staff.[4] Direct Energy submits that the Commission's Order reasonably and appropriately addresses the aforementioned proposals. If adopted, the proposals would discourage customer shopping and adversely impact the competitive retail market and certified retail natural gas suppliers.

For the reasons explained below, OCC's Application for Rehearing is without merit and should be denied.

II. OCC'S APPLICATION FOR REHEARING IS WITHOUT MERIT

A. The Commission did not err in declining to adopt OCC's shadow billing proposal as alleged in OCC's Assignment of Error No. 1

OCC erroneously claims in its Application for Rehearing that, in declining to adopt OCC's shadow billing proposal, the Commission failed to make findings of fact based on record evidence.[5] OCC cites to the Ohio Supreme Court decision in *Tongren*[6] in an attempt to support

4 Order at 6, 13, 19, 27.
5 OCC Application for Rehearing at 2.
6 *Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255.

its allegation that the Commission failed to provide "in sufficient detail, the facts in the record upon which the order is based, and the reasoning it followed in reaching its conclusion."[7] *Tongren*, an appeal from Commission approval of the merger of gas utility companies, is distinguishable from the rulemaking case at hand.[8] The Commission's Order is sufficiently supported by facts presented in comments and reply comments received in this proceeding.[9] OCC has no basis for claiming that the Commission did not rely on facts presented in this proceeding.

In declining to adopt OCC's shadow billing proposal, the Commission was clearly persuaded by written comments of interested stakeholders that the proposal would require significant billing system changes and that a number of existing resources exist "that provide a substantial amount of information for customers to compare pricing and available offers."[10] The Commission also noted that it has declined to adopt OCC's shadow-billing proposal in numerous other cases.[11] The Commission's reflection on its consistency with decisions in prior cases does not render its decision a "blanket rejection" as claimed by OCC. The Commission properly cited to the reasons why it declined OCC's proposal in this proceeding.[12]

OCC implies that the Commission erred in rejecting its shadow-billing proposal because the commenting stakeholders did not calculate a dollar estimate for the significant billing system changes that would be required to support OCC's proposal.[13] Such calculations are not required, and the Commission properly referenced the significant billing system changes required to

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[7] OCC Application for Rehearing at 3.
[8] *Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255 (finding that "strict compliance with the terms of R.C. 4903.09 is not required").
[9] Order at 27-28.
[10] Order at 27-28.
[11] Order at 27.
[12] Order at 27-28.
[13] OCC Application for Rehearing at 4.

support its determination. OCC goes on to inappropriately cite a news article published after issuance of the Order, in an attempt to justify why its shadow billing proposal should have been adopted by the Commission.[14] OCC's provision of the aforementioned news article on rehearing is not proper, and should not be relied upon by the Commission.

OCC attacks the Commission's finding that a number of existing resources exist "that provide a substantial amount of information for customers to compare pricing and available offers."[15] In doing so, OCC argues that it is "unclear why customers must rely on the Energy Choice Ohio website to compare pricing in lieu of shadow-billing" when the Commission has acknowledged that many Ohioans lack sufficient internet access.[16] OCC ignores that the Energy Choice Ohio website is just one way a customer may compare pricing and that there are other existing resources available that do not require internet access.[17] Contrary to OCC's assertion, various resources are available to customers seeking to compare pricing and available offers and adequate consumer protections are in place.

The Commission was not persuaded, based on the record in this proceeding, that OCC's shadow-billing proposal is necessary. In addition, the Commission has repeatedly rejected similar proposals from OCC in the past.[18] Direct Energy supports the Commission's rejection of the unnecessary regulatory burden proposed by OCC and encourages the Commission to reject OCC's request for rehearing on this matter.

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[14] OCC Application for Rehearing at 4. Direct Energy submits that the news article cited by OCC has serious flaws that present an inaccurate analysis of customer bills. A simplistic price comparison that uses the default service price as the sole metric for evaluating products and services offered by suppliers is fundamentally flawed.
[15] Order at 27-28.
[16] OCC Application for Rehearing at 5-6.
[17] Order at 27-28.
[18] See RESA Reply Comments at 8.

B. The Commission did not err in rejecting a recommendation to define the term "commodity charge" and to prohibit non-commodity charges on natural gas utility bills as asserted in OCC's Assignment of Error No. 2

In its second ground for rehearing, OCC argues that the Commission erred when it rejected proposals to define the term "commodity charge" and only permit a commodity charge and approved tariffed distribution charge or service on regulated natural gas bills.[19] OCC has no basis for claiming that the Commission did not have a valid rationale for its decision on this rulemaking issue. OCC also cannot show any immediate prejudice or harm that may result from the Commission's rejection of the proposals to define the term "commodity charge" and to exclude non-commodity charges on utility bills.

In rejecting the "commodity charge" proposals, the Commission found that the proposals, "which would impose an outright prohibition on the inclusion of charges for non-commodity goods and services on natural gas bills, should not be adopted at this time."[20] Such a result would be contrary to the state policy to promote "diversity of natural gas supplies and suppliers"[21] and the "availability of…comparable natural gas services and goods."[22] OCC is required to support Ohio's policies on the development of natural gas markets in Ohio such as recognizing the "continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment."[23] OCC, however, continues to oppose competitive offerings in Ohio regardless of the General Assembly's directives. OCC's Application for Rehearing is yet another example of OCC's opposition to the competitive market. Direct Energy fully supports the Commission's decision to continue to allow non-

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19 OCC Application for Rehearing at 7.
20 Order at 25.
21 Ohio Rev. Code Ann. § 4929.02(A)(3).
22 Ohio Rev. Code Ann. § 4929.02(A)(2).
23 Ohio Rev. Code Ann. §§ 4911.02(C), 4929.02(A)(6).

commodity charges on utility bills, consistent with the aforementioned state policies. Direct Energy encourages the Commission to reject OCC's second ground for rehearing.

C. Contrary to OCC's assertion in Assignment of Error No. 3, the Commission appropriately rejected the proposal to require the current standard choice offer or gas cost recovery rate to be printed on gas bills

The Commission did not err by adopting Staff's proposed price-to-compare ("PTC") statement on customer bills, with certain modifications.[24] Instead of requiring the current standard choice offer ("SCO") or gas cost recovery ("GCR") rate to be printed on bills, the Commission directed that customer bills display a PTC statement that refers consumers to the Energy Choice Ohio website or to the Commission to compare supplier offers to the SCO or GCR.[25] The Commission's modification of the proposed PTC statement avoids the problematic aspects of Staff's proposed PTC statement language (and OCC's suggested modifications to that language) that would mislead customers and contravene Ohio's energy policy that the Commission must follow.[26] Referring customers to the Commission itself or the Commission's energy choice website, where a fair comparison of numerous supplier offers and the SCO and GCR rates can be made, is a reasonable approach that supports Ohio's policies.

Directing customers to the Commission and the Commission's energy choice website 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.[27] Contrary to OCC's assertion, the proposed PTC statement does not violate state policy to "promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods", nor

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[24] Order at 19.
[25] Order at 19.
[26] Ohio Rev. Code Ann. § 4929.02(B).
[27] Ohio Rev. Code Ann. § 4929.02(A)(2)-(4).

does it harm customers that do not have internet.[28] OCC did not show any immediate prejudice or harm that may result to customers that do not have internet access as those customers have the option to contact the Commission to obtain information about the SCO (or GCR, if applicable) and suppliers' offers. The Commission's PTC statement provides consumers (including those without internet) resources to appropriately enable them to compare diverse products available in the market and a variety of information beyond the monthly rate. Accordingly, OCC's third ground for rehearing must be rejected.

D. The Commission appropriately rejected Staff's and OCC's recommendations to include a retail natural gas supplier block mechanism, contrary to OCC's Assignment of Error No. 4

In its fourth and final ground for rehearing, OCC asks the Commission to reverse its decision and establish a retail natural gas supplier block mechanism.[29] Staff and OCC had proposed that Ohio Adm.Code 4901:1-13-12 be amended to permit a customer to request that the natural gas company place a retail natural gas supplier block on the customer's account. The block would prevent the customer's commodity service provider from being switched without the customer's authorization through a code or personal identification number provided to the company.[30] In declining to adopt Staff and OCC's recommendation, the Commission appropriately found that there are existing provisions in Ohio Administrative Code Chapters 4901:1-13 that protect consumers from slamming, while striking a balance between protecting customers and allowing fair competition.[31]

In its assignment of error, OCC feebly argues that the Commission erred in declining to adopt the retail natural gas supplier block mechanism because the utilities did not provide

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[28] OCC Application for Rehearing at 10.
[29] OCC Application for Rehearing at 11-12.
[30] Order at 32.
[31] Order at 35.

estimates of the cost to comply with the proposal.[32] Such cost estimations are not required, and the Commission properly cited support for its determination.[33] In dismissing concerns raised in the comments and reply comments that the block mechanism is unnecessary and will restrict competition, the OCC erroneously claims that the "marketers will not be harmed because they have alternative ways to attract and keep customers."[34] OCC's claim is nonsensical. The proposed block mechanism, if adopted, will discourage customer shopping and adversely impact the competitive retail market and certified retail natural gas suppliers.[35] In addition, the proposed mechanism would provide a competitive advantage to default service and directly conflict 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."[36]

OCC has no basis for claiming that the Commission did not have a valid rationale for its rejection of the proposed block procedure nor can it show any immediate harm that may result from the Commission's rejection of the proposal. Regulation of a competitive market should only be done after careful consideration. The Commission should not entertain overly burdensome and unnecessary regulations such as the proposed block procedure, particularly when such proposals do not advance the goal of developing a functioning competitive market but rather threaten to derail such outcome.

Direct Energy agrees with the Commission's assessment that the Ohio Administrative Code currently provides customers with adequate protection from unauthorized supplier

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32 OCC Application for Rehearing at 12.
33 Order at 34-35.
34 OCC Application for Rehearing at 12.
35 Direct Energy Comments at 5.
36 Ohio Rev. Code Ann. § 4929.02(A)(8); Direct Energy Comments at 6.

switching through the solicitation and enrollment process.[37] As the current rules offer adequate consumer protection and the OCC has no basis for claiming that the Commission did not have a valid rationale to reject the proposed procedure, the Commission should deny OCC's fourth ground for rehearing.

III. CONCLUSION

For the reasons discussed above, Direct Energy requests that the Commission reject OCC's Application for Rehearing in its entirety.

Respectfully submitted,

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Date: April 5, 2021

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[37] Order at 35.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the entities referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned herby certifies that a copy of the foregoing document is also being served on April 5, 2021 upon those listed below.

*/s/Scott Dismukes*_________________
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