BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company | ))))) | Case No. 11-5201-EL-RDR |

**APPLICATION FOR REHEARING**

**AND MEMORANDUM IN SUPPORT OF**

**DIRECT ENERGY SERVICES, LLC AND**

**DIRECT ENERGY BUSINESS, LLC**

Pursuant to Section 4903.10, Revised Code, and Rule 4901:1-35, Ohio
Administrative Code, Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, “Direct Energy”) respectfully file an Application for Rehearing in this matter. Specifically, Direct Energy alleges the August 7, 2013 Opinion and Order (“Opinion and Order”) of the Public Utilities Commission of Ohio (“Commission”) is unlawful and unreasonable in the following respects:

1. The Commission’s Opinion and Order is unreasonable inasmuch as requiring disallowed monies to be returned to customers through the Alternative Energy Rider (“AER”) deprives customers who are now shopping their share of any renewable energy compliance cost over-recovery by Ohio Edison, Cleveland Electric Illuminating Company, and Toledo Edison (collectively, “FirstEnergy”).
2. The Commission’s Opinion and Order is unlawful and unreasonable inasmuch as requiring disallowed monies to be returned to customers through the AER distorts the price to compare.
3. The Commission’s Opinion and Order is unreasonable inasmuch as the Commission failed to order FirstEnergy to implement the recommendations of the financial auditor.

WHEREFORE, Direct Energy respectfully requests that the Commission grant its Application for Rehearing in this matter and modify its Opinion and Order in the manner suggested by Direct Energy.

 Respectfully submitted,

/s/ Joseph M. Clark

Joseph M. Clark

Direct Energy

21 East State Street, 19th Floor

Columbus, Ohio 43215

(614) 220-4369 Ext 232 (Office)

(614) 220-4634 (Fax)

joseph.clark@directenergy.com

Attorney for Direct Energy Services, LLC and Direct Energy Business, LLC

**MEMORANDUM IN SUPPORT**

 Section 4903.10, Revised Code, requires applications for rehearing from Commission orders be made within thirty (30) days after such order is entered upon the Commission’s journal. Direct Energy hereby respectfully requests rehearing of the Commission’s August 7, 2013 Opinion and Order.

 Direct Energy wishes to clarify at the outset that it is *not* asking for rehearing on the Commission’s decision to disallow (or not disallow) recovery of certain renewable energy mandate compliance costs. Direct Energy takes no position as to the Commission’s disallowance or refusal to disallow recovery of any renewable energy mandate compliance costs. Direct Energy requests rehearing for the limited purposes of: (1) asking for review of the Commission’s determination that FirstEnergy refund $43,362,796.50 in disallowed costs through an adjustment to the AER;[[1]](#footnote-1) and (2) asking for the Commission to require FirstEnergy to adopt the recommendations of the financial auditor.

1. **The Commission’s Opinion and Order is unreasonable inasmuch as requiring disallowed monies to be returned to customers through the AER deprives customers who are now shopping their share of any renewable energy compliance cost over-recovery by FirstEnergy.**

In its Opinion and Order (at 28), the Commission directed FirstEnergy to return the refund of disallowed costs back through the AER. Just as only non-shopping customers pay the AER, only non-shopping customers will be credited the disallowed monies. However, shopping statistics compiled by the Commission show both (1) a small number of customers remain on standard service offer (“SSO”) service and (2) the number of SSO customers has decreased since 2010. The Commission’s shopping statistics show as follows:

 % of Nonshopping Sales % of Nonshopping Sales

Company (March 31, 2013) (December 31, 2010)

Cleveland Electric 14.95% 31.28%

Ohio Edison Company 23.42% 32.75%

Toledo Edison Company 24.11% 31.80%[[2]](#footnote-2)

These statistics demonstrate that, if the refund is only returned to SSO customers through the AER, customers who paid the AER during that time but are now shopping will not receive any refund of the costs they overpaid unless they return to SSO service. This result is not fair to customers who shopped after overpaying these costs as SSO customers. As noted by FirstEnergy, it has experienced “rapid change” in its shopping levels.[[3]](#footnote-3) Therefore, a significant number of customers are affected by how the Commission chooses to refund any over-collection to customers. Further, as shown by the March 31, 2013 shopping results, a refund through the AER would disproportionately benefit a relatively small percentage of remaining SSO customers.

 The Commission should ensure customers who are now shopping but who were SSO customers during the disallowed RECs cost period are not left out of any refund amount.

1. **The Commission’s Opinion and Order is unlawful and unreasonable inasmuch as requiring disallowed monies to be returned to customers through the AER distorts the price to compare.**

As noted above, the AER is bypassable and therefore not paid for by shopping customers. As a bypassable rider, the AER is part of the “price to compare” which customers commonly use as a benchmark to review price offers by various CRES providers. Fluctuations up or down in bypassable riders affect the price to compare and therefore affect levels of shopping activity. The higher the price to compare versus a CRES offering the more a customer is likely to save. Lowering the price to compare results in fewer savings on a straight per kWh offering.

 Refunding disallowed costs through the AER artificially distorts the price to compare downward and will inhibit customer shopping. In addition, customers who overpaid the AER and later switched will not only not receive a refund but will also experience reduced savings for the period of the AER credit. This artificial and negative impact on customer shopping infringes on Ohio’s state policy to encourage shopping. Section 4928.02(A), (B), and (G), Revised Code. Further, this result is unreasonable in light of the Commission’s steadfast commitment to competitive markets and the desire to establish a level playing field in which CRES providers compete both against themselves and the utility.

1. **The Commission possesses a simple remedy to the problems caused by refunding disallowed renewable energy mandate compliance costs through the AER.**

Direct Energy requests the Commission refund the disallowed costs through a non-bypassable credit on all customers’ bills. This mechanism would provide the most fair resolution to customers who overpaid in their AER rates but are now switched and would not enjoy the refund they are owed. Additionally, a non-bypassable credit would not impact the price to compare and therefore avoid a market distortion for any period of time. In addition to these substantive reasons, a credit to all customers should be easy to administer by FirstEnergy and simple to explain to customers.

Alternatively, if the Commission rejects the suggestion to refund the disallowed costs through a non-bypassable credit, Direct Energy requests the Commission require the entire refunded amount be routed through the AER in one quarterly adjustment. Returning the entire amount to SSO customers in just one quarter will minimize to the shortest time possible any market distortion caused by the refund.

The Opinion and Order requires FirstEnergy to “file tariff schedules within 60 days of the issuance of a final appealable order in this proceeding, adjusting Rider AER to reflect the refund and associated carrying costs.”[[4]](#footnote-4) However, the Opinion and Order is not clear as to the time over which FirstEnergy is to return the disallowed costs. There is no indication that all of the monies are due back to customers in that particular tariff filing adjusting that quarter’s AER. Further, this kind of clarity is important given that the financial auditor criticized FirstEnergy for unilaterally (without Commission permission) levelizing the AER and recovering costs incurred in a particular quarter over periods longer than a quarter.[[5]](#footnote-5) Direct Energy notes for the Commission that the Stipulation and Recommendation in FirstEnergy’s electric security plan proceeding, as approved by the Commission, expressly subjects the level of AER charges to the outcome of this proceeding and therefore such an order would be appropriate under FirstEnergy’s currently approved ESP.[[6]](#footnote-6)

Finally, regardless of how the Commission determines to return any disallowed costs to customers, the Commission should offset any refund of disallowed costs by the large under-collection of AER costs by FirstEnergy. The financial auditor’s report indicates FirstEnergy under‑collected $23,431,795 as of December 31, 2011 for renewable energy mandate compliance costs.[[7]](#footnote-7) It is reasonable to believe that some of the approximately $23 million under-collection is comprised of the now disallowed costs. The Commission should order FirstEnergy to determine how much of this under-collection is comprised of now disallowed costs and then offset the approximately $43 million disallowance with the remaining under-collected amount. An offset of the disallowed amount will allow FirstEnergy to receive any proper under-collected amount, still provide customers with the full value of the refund of disallowed costs, and also lessen any impacts on the competitive market that might occur from the mechanism used to return disallowed costs to customers.

1. **The Commission’s Opinion and Order is unreasonable inasmuch as the Commission failed to order FirstEnergy to implement the recommendations of the financial auditor.**

The financial auditor made thirty-three (33) recommendations regarding FirstEnergy’s processes, procedures, and practices related to the AER.[[8]](#footnote-8) FirstEnergy witness Mikkelson’s entire direct testimony addresses the financial auditor’s recommendations. Ms. Mikkelson testified that FirstEnergy agreed with many of the recommendations and that FirstEnergy would implement those recommendations on a going forward basis “if approved by the Commission.”[[9]](#footnote-9) Additionally, FirstEnergy witness Stathis testified that FirstEnergy had already implemented some of the recommendations.[[10]](#footnote-10)

However, the Commission’s Opinion and Order unreasonably fails to require FirstEnergy to adopt the recommendations in the financial auditor’s report that FirstEnergy volunteered to implement or have already put into place. The Commission should explicitly approve FirstEnergy implementing the recommendations that FirstEnergy witness Mikkelson voluntarily agreed to implement if approved[[11]](#footnote-11) and require FirstEnergy to continue the already implemented recommendations discussed in FirstEnergy witness Stathis’ testimony.

Witness Mikkelson also disputed implementation of recommendations 2, 3, and 4 because those recommendations attempt to align costs recovered in each quarter in the AER more closely with the costs estimated to be incurred in that quarter with any over or under recovery included in the AER for the second subsequent quarter.[[12]](#footnote-12) FirstEnergy witness Mikkelson also objected to Recommendation 7, to recover one quarter of the under-recovery in each of the next four quarterly AER calculations.[[13]](#footnote-13) Witness Mikkelson objects to implementing these recommendations inasmuch as she claims implementation would run counter to FirstEnergy’s approved Stipulation in its ESP.

The Commission should require FirstEnergy to implement recommendations 2, 3, 4, and 7. Simply put, as shown above, the amounts recovered through the AER are explicitly subject to the outcome of this proceeding and the financial auditor’s report is part of the “outcome” of this proceeding.[[14]](#footnote-14) Therefore, mandating that FirstEnergy implement the auditor’s recommendations is consistent with the Stipulation in FirstEnergy’s ESP proceeding.

**CONCLUSION**

 For the reasons contained within, Direct Energy respectfully requests the Commission grant its Application for Rehearing to avoid unlawful and unreasonable fluctuations in the price to compare and require FirstEnergy to adopt the financial auditor’s recommendations.

 Respectfully submitted,

/s/ Joseph M. Clark

Joseph M. Clark

Direct Energy

21 East State Street, 19th Floor

Columbus, Ohio 43215

(614) 220-4369 ext 232 (Office)

(614) 220-4634 (Fax)

joseph.clark@directenergy.com

Attorney for Direct Energy Services, LLC and Direct Energy Business, LLC

**CERTIFICATE OF SERVICE**

 I certify that a copy of the foregoing Application for Rehearing was served this 6th day of September, 2013, by electronic mail upon the persons on the service list below:

 /s/ Joseph M. Clark

Joseph M. Clark

James W. Burk

Carrie M. Dunn

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

Telephone: (330) 761-7735

Facsimile: (330) 761-7735

burkj@firstenergycorp.com

cdunn@firstenergycorp.com

David A. Kutik

Lydia M. Floyd

Jones Day

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114-1190

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

dakutik@jonesday.com

lfloyd@jonesday.com

*Attorneys for Ohio Edison Company, The Cleveland Electric*

*Illuminating Company, and The Toledo Edison Company*

Terrence O’Donnell

Dickenson Wright PLLC

150 East Gay Street, Suite 2400

Columbus, OH 43215

Telephone: (614) 744-2583

Facsimile: (614) 433-7274

E-mail: todonnell@dickinsonwright.com

*Attorney for Mid-Atlantic Renewable Energy Coalition*

Bruce J. Weston

Melissa Yost

Office of the Ohio Consumers’ Counsel

10 West Broad Street, Suite 1800

Columbus, OH 43215-3485

Telephone: (614) 466-9565

Facsimile: (614) 466-9475

E-mail: yost@occ.state.oh.us

*Attorneys for Office of the Ohio Consumers’*

*Counsel*

William Wright

Chief, Public Utilities Section

Thomas G. Lindgren

Ryan P. O’Rourke

Public Utilities Commission of Ohio

180 East Broad Street, 6th Floor

Columbus, OH 43215

E-mail: William.wright@puc.state.oh.us

thomas.lindgren@puc.state.oh.us

ryan.o’rourke@puc.state.oh.us

*Attorneys for the Staff of the Public Utilities*

*Commission of Ohio*

David F. Boehm

Michael L Kurtz

Jody M. Kyler

Boehm Kurtz & Lowry

36 East Seventh Street, Suite 1510

Cincinnati, OH 45202

Telephone: (513) 421-2255

Facsimile: (513) 421-2764

E-mail: dboehm@BKLlawfirm.com

mkurtz@BKLlawfirm.com

jkyler@BKLlawfirm.com

*Attorneys for The Ohio Energy Group*

Christopher J. Allwein

Williams, Allwein & Moser, LLC

1373 Grandview Ave., Suite 212

Columbus, OH 43212

Telephone: (614) 429-3092

Facsimile: (614) 670-8896

E-mail: callwein@wamenergylaw.com

*Attorney for the Sierra Club*

Michael K. Lavanga

Brickfield, Burchette, Ritts & Stone PC

1025 Thomas Jefferson Street NW

8th Floor West Tower

Washington, DC 20007

Telephone: (202) 342-0800

Facsimile: (202) 342-0807

E-mail: mkl@bbrslaw.com

*Attorney for Nucor Steel Marion, Inc*

Cathryn Loucas

Trent A. Dougherty

Ohio Environment Council

1207 Grandview Avenue, Suite 201

Columbus, OH 43212-3449

Telephone: (614) 487-7506

Facsimile: (614) 487-7510

E-mail: cathy@theoec.org

trent@theoec.org

*Attorneys for the OEC*

Theodore S. Robinson

Citizen Power

2121 Murray Avenue

Pittsburgh, PA 15217

Telephone: (412) 421-7029

Facsimile: (412) 421-6162

E-mail: robinson@citizenpower.com

*Attorney for Citizen Power*

Matthew W. Warnock

Maria J. Armstrong

BRICKER & ECKLER LLP

100 South Third Street

Columbus, OH 43215-4291

Telephone: (614) 227-2300

Facsimile: (614) 227-2390

E-mail: mwarnock@bricker.com

marmstrong@bricker.com

*Attorneys for The OMA Energy Group*

M. Howard Petricoff

Michael J. Settineri

Lija Caleps-Clark

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

Columbus, OH 43215

Telephone: (614) 464-5414

mhpetricoff@vorys.com

mjsettineri@vorys.com

lkalepsclark@vorys.com

*Attorneys for Interstate Gas Supply, Inc.*

Nicholas McDaniel

ENVIRONMENTAL LAW &

POLICY CENTER

1207 Grandview Ave., Suite 201

Columbus, OH 43212

NMCDaniel@elpc.org

*Attorney for ELPC*

1. Opinion and Order at 28. The Commission directed FirstEnergy to file tariff schedules within sixty (60) days of the issuance of a final, appealable order in this proceeding to reflect the disallowance and associated carrying costs [↑](#footnote-ref-1)
2. “*Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales for the Month Ending March 31, 2013*” and “*Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales for the Month Ending December 31,* 2010,” Public Utilities Commission of Ohio, http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/ (last accessed August 19, 2013). [↑](#footnote-ref-2)
3. FirstEnergy Exhibit 11 at 12-13. (Rebuttal Testimony of Eileen Mikkelson). [↑](#footnote-ref-3)
4. Opinion and Order at 28. [↑](#footnote-ref-4)
5. Commission Ordered Exhibit 1 at 13, 31. [↑](#footnote-ref-5)
6. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, PUCO Case No. 12-1230-EL-SSO, Stipulation and Recommendation at 11-12 (¶4). (hereinafter cited as *FirstEnergy ESP Case*). (“…subject to the outcome of PUCO case number 11-5201-EL-RDR). [↑](#footnote-ref-6)
7. Commission Ordered Exhibit 1 at 16. [↑](#footnote-ref-7)
8. Commission Ordered Exhibit 1 at 31. [↑](#footnote-ref-8)
9. FirstEnergy Exhibit 4 at 2-10 (Direct Testimony of Eileen Mikkelson). Witness Mikkelson agreed (on page 4) that FirstEnergy would implement Recommendations 5, 6, 8, 9, 10, 13, 14, and 15 if approved by the Commission. FirstEnergy also said it would provide three (3) percent provision calculations for each operating company for calendar year 2013 and the balance of the SSO period (Recommendation 17) if the Commission requests such calculations. [↑](#footnote-ref-9)
10. FirstEnergy Exhibit 2 at 48-49 (Direct Testimony of Dean W. Stathis). Recommendations 16, 11, 12 [↑](#footnote-ref-10)
11. *See also* FirstEnergy Post Hearing Brief at 79 (May 30, 2013). [↑](#footnote-ref-11)
12. FirstEnergy Exhibit 4 at 6. Of note, FirstEnergy also opposed the financial auditor’s first recommendation that the overall Rider AER rate calculated for each operating company should be used rather than allocating to rate schedule based on loss factors. Direct Energy takes no position on this recommendation. [↑](#footnote-ref-12)
13. FirstEnergy Exhibit 4 at 6. [↑](#footnote-ref-13)
14. *FirstEnergy ESP Case*, Stipulation and Recommendation at 11-12 (¶4). [↑](#footnote-ref-14)