

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application |) | |
| of Duke Energy Ohio, Inc. to |) | |
| Adjust Rider DR-IM and Rider |) | Case No. 13-1141-GE-RDR |
| AU for 2012 SmartGrid Costs. |) | |

**DUKE ENERGY OHIO, INC.'S MOTION TO STRIKE
DIRECT TESTIMONY OF TERESA L. RINGENBACH AND JENNIFER L. LAUSE
AND REQUEST FOR EXPEDITED TREATMENT**

Pursuant to Rule 4901-1-12(A), Ohio Administrative Code (O.A.C.), Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) moves the Public Utilities Commission of Ohio (Commission) to strike, on an expedited basis, the direct testimony of Teresa L. Ringenbach and Jennifer L. Lause, filed on behalf of Direct Energy Services, LLC, and Direct Energy Business, LLC (collectively, Direct Energy).

A memorandum in support of this motion is attached and incorporated herein.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. Introduction

This case was initiated with the filing of Duke Energy Ohio's Application (Application) on June 28, 2013, requesting approval to adjust its advanced utility rider (Rider AU) and its distribution reliability – infrastructure modernization rider (Rider DR-IM) to allow for recovery of 2012 costs for the deployment of its grid modernization and related systems.¹ Thereafter, the Office of the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAЕ), FirstEnergy Solutions Corp. (FES), and Direct Energy were all granted intervention. On January 10, 2014, most of the intervening parties agreed to a Stipulation and Recommendation² (Stipulation), which resolved all of the issues raised in this case. Direct Energy was not a signatory party to the Stipulation. Instead, it filed the direct testimony of Teresa L. Ringenbach and Jennifer L. Lause on January 10, 2014.³ The testimony opposes the Stipulation and raises issues *not preserved for litigation* by Direct Energy's comments in this proceeding. Moreover, Direct Energy addresses topics that are outside the scope of this proceeding and irrelevant to the subject matter of this case. Accordingly, the Commission should strike all of Direct Energy's testimony.

II. Direct Energy did not raise any of the issues in testimony in its comments in this proceeding.

Duke Energy Ohio has filed and resolved applications related to recovery of costs for SmartGrid deployment on an annual basis, since 2009.⁴ In each of these cases, the applications

¹ *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2012 SmartGrid Costs*, Case No. 13-1141-GE-RDR, Application (June 28, 2013).

² *Id.*, Stipulation and Recommendation (January 10, 2014).

³ *Id.*, Direct Testimony of Teresa L. Ringenbach and Direct Testimony of Jennifer L. Lause filed on behalf of Direct Energy Services, LLC, and Direct Energy Business, LLC (January 10, 2014).

⁴ *In the Matter of the Application of Duke Energy Ohio, Inc. to adjust Rider DR-IM for 2009 SmartGrid Costs*, Case No. 10-867-GE-RDR,

filed and the issues raised by the intervening parties involved questions related to the application and to the prudence of the Company's expenditures on SmartGrid deployment for the preceding year. The matters that form the basis for discussion and resolution of each rider proceeding derived from the comments of the parties that are part of the procedural process ordered by the Commission.

In this case, Direct Energy filed comments that are *completely unrelated* to the testimony that was more recently filed. In Direct Energy's Initial Comments, Direct Energy argued two points. First, Direct Energy argues that the Commission should order Duke Energy Ohio to delay a consumer education campaign that was the subject of a stipulation in a prior proceeding, and second, Direct Energy argues that the Commission should order Duke Energy Ohio to terminate its currently active time-of-use rate pilot programs. Neither of these two arguments was raised by Direct Energy in its comments and neither relates in any way to the matters that Direct Energy now seeks to advance through the testimony of its two witnesses. As a result, the Company is significantly prejudiced in not having adequate ability to respond to Direct Energy's current arguments. Initial comments were filed in this proceeding on October 31, 2013. Duke Energy Ohio submitted reply comments, as did OCC, on November 14, 2013. Neither Duke Energy Ohio nor OCC addressed any matters related to customer data in reply comments because the Company was not aware at that time, that Direct Energy would be raising these issues at hearing. As a result, the Company is prejudiced in the conduct of these proceedings and has not had an adequate opportunity to respond to the testimony filed. As a result, the testimony of Direct Energy must be stricken.

III. The issues raised in Direct Energy’s testimony are not relevant to this proceeding.

The testimony filed by Direct Energy includes information that is not relevant to this proceeding nor timely for the Commission’s review in this proceeding. Specifically, the testimony submitted by Theresa L. Ringenbach and Jennifer L. Lause concerns access to customer information, customer privacy and security, interval load data access for competitive retail electric supply (CRES) providers, and the sharing of such information. These matters have no relevance whatsoever to the adjustment of Rider AU and Rider DR-IM to allow for the recovery of grid modernization deployment costs.

The Ohio Rules of Evidence provide that “relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.⁵ Additionally, evidence which is not relevant is not admissible.⁶ While the Commission has noted that it is not strictly bound by the Ohio Rules of Evidence, the Commission does seek to maintain consistency with the Ohio Rules of Evidence to the extent practicable.⁷ In this case, the matters raised are irrelevant to the Company’s application and are not admissible. In its application in this case, the Company did not seek the Commission’s determination of any matter related to customer data sharing or address enhancements to its interactions with CRES. And since Direct Energy did not submit any comments that relate to anything that is contained in the testimony filed, the matters addressed in the testimony are irrelevant and inadmissible and should be stricken.

⁵ Evid.R. 401.

⁶ Evid.R. 402.

⁷ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, *et al.*, Opinion and Order, at pg. 15, (September 4, 2013).

IV. The matters raised by Direct Energy in testimony are not timely.

It is also important to recognize that the Commission is currently considering the issues raised in the Direct Energy testimony in a separate docket. On December 7, 2012, the Commission opened an investigation into the health, strength, and vitality of Ohio's retail electric service market and actions that the Commission may take to enhance the competitive marketplace. The Commission invited interested parties to comment on a series of questions and, in May 2013, scheduled a series of workshops to promote coordinated efforts to further develop Ohio's retail electric service market. Among the matters discussed in these workshops was electric distribution utility coordination with CRES providers to provide customer data.⁸ The Staff of the Public Utilities Commission of Ohio (Staff) filed a status report (Report) in that proceeding on January 16, 2014. In that Report, the Staff noted that customer energy usage data from advanced metering "creates a new facet of personal information that needs to be evaluated and addressed,..." Further, Staff correctly points out that electric distribution utilities will have costs related to these processes and functions that have not yet been evaluated.⁹

Despite the Commission's efforts to work with all interested stakeholders in the investigation docket, Direct Energy now seeks immediate answers to questions not yet resolved by the Commission. Moreover, Direct Energy does so in this single-utility docket, without allowing the Commission to work with industry participants to find global solutions to some of these questions. Direct Energy's intrusion into the SmartGrid rider proceeding to advance its own agenda is misplaced and serves to needlessly extend this hearing and record. For all of these reasons, Direct Energy's testimony should be stricken.

⁸ *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI.

⁹ *Id.* at pg. 23.

Direct Energy witness Jennifer L. Lause recommends to the Commission that Duke Energy Ohio be directed to work with stakeholders to develop a timeline to implement various proposed “phases” of meter data management and data sharing, and further suggests that the Company be required to develop logistics and capabilities to provide data as requested by Direct Energy. While such systems and capabilities may, in the future, be determined to be of value to customers, the Company did not propose to develop any such enhancements in this proceeding. Prior to doing so, it would be Duke Energy Ohio’s responsibility to develop a plan for such infrastructure and propose a level of cost and appropriate cost recovery for this work. Presumably, interested parties would then wish to evaluate the Company’s proposal and determine what value it offers to customers and whether costs may be recovered with proper documentary support for all of these requests. There is no information related to any of these matters in the Company’s application in this proceeding. The testimony of Ms. Lause is inappropriate in the context of this proceeding, irrelevant to the matters addressed therein; and not timely given the Commission’s pending deliberations in other dockets.

The testimony of Direct Energy’s witness Theresa L. Ringenbach, likewise, seeks the implementation of processes and procedures, and the building of infrastructures that are not yet in place or not yet operable for Duke Energy Ohio. Despite these hurdles, Ms. Ringenbach asks the Commission to simply order that it be so. Although some of the information requested will be available beginning in mid-2014, Ms. Ringenbach’s requests seeks processes, procedures, and data infrastructure that go well beyond Duke Energy Ohio system’s capabilities.

Ms. Ringenbach’s testimony contains six specific requests. Items numbered 1 through 4 relate to how, and under what standards of privacy, Duke Energy Ohio will provide customer usage data to CRES providers to enable time-of-use billing. Duke Energy Ohio has developed a

web portal pursuant to a commitment made in a stipulation in Case No. 11-3549-EL-SSO, *et al.*, as approved and adopted by the Commission. The web portal will enable the Company to share customer information such as it has provided in the past, via the portal, while at the same time complying with existing Commission rules related to such data. However, Direct Energy now seeks access to customer usage data from the Company's smart meters with explicit customer approval for the more granular data. The parameters around sharing customer data more efficiently were discussed in the Commission's Retail Market Investigation workshops and debated at length. It is anticipated that the Commission will ultimately update its rules to address questions related to ongoing data security and privacy questions. However, the Company has not proposed any changes with respect to CRES data processes in this proceeding and the record has not been developed to enable such determinations herein. Thus, Direct Energy's requests are far afield of the matters involved in this proceeding and generally not timely in that many of the issues raised must be addressed more substantively by the Commission in other dockets. Thus, Direct Energy's testimony in this proceeding should be stricken.

V. In Light of the Hearing Date in this Proceeding, Duke Energy Ohio Requests Expedited Treatment of This Motion

Rule 4901-1-12(C), O.A.C., provides that a motion may include a request for an expedited ruling, with grounds to be set forth in the memorandum in support. The rule further provides that the requesting party "may first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda." If the moving party does not certify that no party so objects, the rule continues, any party may file a memorandum contra within seven days after service, or such other period as the Commission or the examiner requires.

The hearing in this proceeding is scheduled to commence on February 4, 2014. In light of that timing, expedited treatment is the only avenue for resolution of these issues prior to the hearing date. Because it is critical for the parties to know what topics will be at issue during the hearing, Duke Energy Ohio is requesting expedited treatment of its motion to strike testimony. Duke Energy Ohio filed this motion as soon as possible after receiving the testimony and recognizes that the time period for filing memoranda contra may be shortened. Duke Energy Ohio is serving all parties via email in order to ensure rapid receipt and consideration of this motion.

Duke Energy Ohio has not contacted the other parties in this case to determine whether they object to the issuance of a ruling on these motions without the filing of memoranda.

IV. Conclusion

The direct testimony of Teresa L. Ringenbach and Jennifer L. Lause on behalf of Direct Energy should be stricken because the testimony addresses issues that are not relevant in this docket and are not timely for the Commission's consideration. For all of these reasons, the testimony on behalf of Direct Energy should be stricken.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by electronic mail to the parties below, this 16th day of January, 2014.


Elizabeth H. Watts

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