

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA THE MOTIONS TO
INTERVENE OF DIRECT ENERGY BUSINESS, LLC, DIRECT ENERGY SERVICES,
LLC, AND FIRSTENERGY SOLUTIONS CORP.**

On June 28, 2013, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) filed an application (Application) with this honorable Public Utilities Commission of Ohio (Commission), seeking 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 deployment of its grid modernization and related systems.

On September 19, 2013, Direct Energy Business, LLC, and Direct Energy Services, LLC, (collectively, Direct Energy) moved to intervene in these proceedings. Also on September 19, 2013, FirstEnergy Solutions Corp. (FES) moved to intervene in these proceedings. As Direct Energy and FES correctly indicated in their respective motions, interventions in Commission proceedings are governed by R.C. 4903.221 and O.A.C. 4901-1-11. However, Direct Energy and FES err in the application of the relevant legal parameters to the facts. As Duke Energy Ohio demonstrates herein, Direct Energy and FES' respective motions should be denied.

Nature of the Prospective Intervenor's Interest

The first element to be considered by the Commission, pursuant to R.C. 4903.221, is the nature and extent of the prospective intervenor's interest. In its Memorandum in Support, Direct Energy does not articulate any interest that is impacted by, or relevant to, Duke Energy Ohio's

Application. Direct Energy merely notes that it is a certificated competitive retail electric service provider who is active in the Duke Energy Ohio service area.¹ Similarly, FES fails to describe any actual interest in this proceeding. FES states only that it currently serves residential customers and has an interest in ensuring that the proposed adjustments do not adversely affect a customer's ability to shop and FES' ability to compete as a CRES. It includes no hint as to how the adjustment of nonbypassable riders such as these could possibly affect a customer's ability to shop or FES' ability to compete. Thus, neither of these potential intervenors indicates any cognizable interest in the update of these riders. Notably, neither party has ever intervened in the proceedings to update these riders, over the past four years. There is nothing new or novel about the current Application that warrants such new interventions.

While Duke Energy Ohio recognizes that Direct Energy and FES operate in its territory as competitive retail service providers, this generic statement fails to explain any way in which the Application in these proceedings could possibly impact such businesses. The proposal set forth in the Application, designed in similar fashion to the three that have preceded it, will not impact competitive suppliers. The Application does not change any of a retailer's costs of doing business. It does not impose any additional charges, or raise any current charges, due from a retailer. Indeed, in the Application, Duke Energy Ohio merely seeks to recover costs for deployment of its grid modernization from the previous year. This is, beyond any doubt, a distribution service. Thus, the application has no impact on Direct Energy or FES. Direct Energy and FES have failed to identify an interest sufficient to warrant intervention in these proceedings.

¹ Direct Energy Memorandum in Support at p.2.

Legal Position and Probable Relation to Merits of the Case

The second element to be considered by the Commission, pursuant to R.C. 4903.221, is the prospective intervenor's legal position and its probable relation to the merits of the case. Again, however, Direct Energy and FES fail to identify any position that they might take that is related to the actual merits of the case. The proceedings will have no impact on shopping and no impact on competition in Duke Energy Ohio's service area. Indeed, the Company has proceeded with deployment of grid modernization since 2009, with rider recovery each year, and with no interest on the part of either Direct Energy or FES. Direct Energy and FES should not be granted intervention, as they are undeniably unaffected by this Application.

Undue Delay and Significant Contribution

The third and fourth elements to be considered by the Commission, pursuant to R.C. 4903.221, are whether the requested intervention will unduly prolong or delay the proceeding and whether the prospective intervenor will provide a significant contribution to full development and equitable resolution of the factual issues. Neither of these elements is satisfied in the instant requests for intervention. Direct Energy and FES have already delayed approximately three months before intervening in this Application. The Staff of the Public Utilities Commission of Ohio and other intervenors have substantially completed their audits and will be submitting reports very soon. Intervening at this juncture will unduly prolong and/or delay the proceeding. And based upon their respective motions, Direct Energy and FES do not have any discernible contribution to make to the equitable resolution of the factual issues.

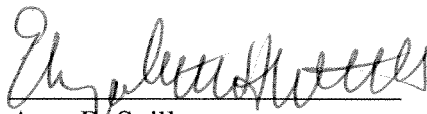
Moreover, any matters of concern to either of the two parties can be managed through discussion at the Duke Energy Ohio SmartGrid Collaborative. Both Direct Energy and FES have been invited to attend the meetings of the Collaborative since its inception in 2009. Direct

Energy has only recently availed itself of this opportunity. To the extent either party elects to participate, this open forum provides ample opportunity for robust discussion.

Undeniably, the elements set forth in Ohio law as necessary for intervention in Commission proceedings have not been met by either Direct Energy or FES.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission deny the motion by Direct Energy and FES for intervention in this proceeding.

Respectfully submitted,
DUKE ENERGY OHIO, INC.



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 24th day of September, 2013, to the following parties.


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