

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and the Toledo)
Edison Company for Authority to Provide) Case No. 12-1230-EL-SSO
for a Standard Service Offer Pursuant to)
R.C. § 4928.143 in the Form of an Electric)
Security Plan)

**JOINT MOTION OF DIRECT ENERGY SERVICES, LLC, DIRECT ENERGY
BUSINESS, LLC AND IGS ENERGY, INC. TO PARTIALLY STRIKE FIRSTENERGY
OHIO UTILITIES’ MEMORANDUM CONTRA AND REPLY TO MOVANTS’
MEMORANDUM CONTRA**

Pursuant to Rule 4901-1-12, Ohio Administrative Code (“O.A.C.”), Direct Energy Services, LLC, Direct Energy Business, LLC (collectively “Direct Energy”) and IGS Energy, Inc. (“IGS”) move to partially strike FirstEnergy Ohio Utilities’ Memorandum Contra the Joint Motion to Bifurcate Issues and Reply to Movants’ Memorandum Contra the Motion for Waivers. The reasons supporting this Motion to Partially Strike are contained in the accompanying Memorandum in Support.

Respectfully Submitted,

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**MEMORANDUM IN SUPPORT OF
THE JOINT MOTION TO PARTIALLY STRIKE**

On April 13, 2012, Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company (“FirstEnergy”) filed an Application for approval of an Electric Security Plan (“ESP”), Stipulation and Recommendation (“Stipulation”), and Motion for Waiver of Rules, Request for Expedited Treatment and Memorandum in Support Thereof (“Motion for Waivers”). FirstEnergy stated in its Motion for Waivers that “Additionally, pursuant to O.A.C. 4901-1-12(C), expedited consideration of this Motion is requested.”¹ Direct Energy and IGS

¹ Motion for Waivers at 2 (April 13, 2012).

timely filed a Joint Memorandum Contra Motion for Waivers on April 16, 2012.² Additionally, on April 17, 2012, several parties (collectively referred to as “Public Advocates”) filed a Joint Motion to Bifurcate Issues and Joint Memorandum Contra FirstEnergy’s Motion for Waiver of Rules.³ On April 18, 2012, FirstEnergy filed The FirstEnergy Ohio Utilities’ Memorandum Contra the Joint Motion to Bifurcate Issues and Reply to Movants’ Memorandum Contra the Motion for Waivers (hereinafter referred to as “Reply”). FirstEnergy’s Reply argued against the Joint Motion to Bifurcate as well as responded (on pages 5-6) to both of the Memoranda Contra the Motion for Waivers.

Pages 5-6 of the Reply responding to both of the Memoranda Contra FirstEnergy’s Motion for Waivers should be stricken. Rule 4901-1-12(C), O.A.C., states as follows:

(C) Any motion may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support ... If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objection, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires. **No reply memoranda shall be filed in such cases unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner.** (Emphasis added).

FirstEnergy’s Reply as it relates to the respective Memoranda Contra the Motion for Waivers should be partially stricken (pages 5-6) inasmuch as that portion of the Reply is not permitted under Rule 4901-1-12(C). The Commission, the legal director, the deputy legal director, or the

² Direct Energy and IGS re-filed the Joint Memorandum Contra Motion for Waivers on April 18, 2012 out of an abundance of caution to ensure that Direct Energy was properly a party to this proceeding and the document was properly filed inasmuch as the Commission had not yet granted FirstEnergy’s request that all parties to the previous ESP case in Case No. 10-388-EL-SSO automatically be granted party status in this case. Direct Energy was a party to Case No. 10-388-EL-SSO. Attorney Examiner Willey, in an Entry dated April 19, 2012, granted FirstEnergy’s request that all Parties in Case No. 10-388-EL-SSO automatically be made parties to the instant case.

³ Joint Motion to Bifurcate Issues and Joint Memorandum Contra FirstEnergy’s Motion for Waiver of Rules by Environmental Law and Policy Center, Natural Resources Defense Council, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, Office of the Ohio Consumers’ Counsel (April 17, 2012).

attorney examiner did not request that FirstEnergy file a reply to the respective Memoranda Contra. FirstEnergy forfeited the ordinary right to file a reply to a memorandum contra by requesting expedited treatment when FirstEnergy could not certify that no party had an objection to the request for expedited treatment.⁴ Denying this Motion to Partially Strike would permit FirstEnergy to have the best of both worlds outside the confines of the rules.

WHEREFORE, Direct Energy and IGS respectfully request that the Commission grant this Motion to Partially Strike for the reasons explained herein.

Respectfully Submitted,

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⁴ See Motion for Waivers at 2, FN 1. (“As the Application initiating this matter is being filed contemporaneously with this Motion, formal intervention has not yet been granted and the undersigned counsel makes no representation regarding the position of any such potential intervenors with respect to the Commission’s expedited consideration.”).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Motion to Partially Strike* was served this 20th day of April, 2012 by electronic mail upon the persons listed below.

/s/ Joseph M. Clark

Joseph M. Clark

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Summary: Motion Joint Motion of Direct Energy Services, LLC, Direct Energy Business, LLC and IGS Energy, Inc. to Partially Strike FirstEnergy Ohio Utilities' Memorandum Contra and Reply to Movants' Memorandum Contra electronically filed by Mr. Asim Z. Haque on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC and IGS Energy, Inc.