

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

**In the Matter of the Commission's
Investigation of Ohio's Retail Electric
Service Market.**

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Case No. 12-3151-EL-COI

**Reply Comments
of
Direct Energy Services LLC and Direct Energy Business LLC**

Date: July 22, 2013

Introduction

Direct Energy Services LLC and Direct Energy Business Services LLC (jointly “Direct Energy”) file these reply comments to respond to several comments received by the Public Utilities Commission of Ohio (“Commission”) in response to one question posed on June 5, 2013.¹ In particular, Direct Energy replies to comments in response to the Commission’s Corporate Separation Question A.

Planning and Designing the Electric Security Plans is One Area in which Additional Controls are Needed to Avoid Preferential Outcomes for Non-Regulated Entities

In Corporate Separation Question A, the Commission asked:

How can the Commission ensure that decisions made on behalf of the jurisdictional EDU are not providing preferential outcomes for non-regulated entities?

The FirstEnergy electric distribution utilities (“EDUs”),² The Dayton Power and Light Company (“DP&L”), and Duke Energy Ohio, Inc. (“Duke”) all argued that there are adequate legal protections in place to guard against EDUs providing preferential treatment to non-regulated entities, and all concluded that nothing further is required.³ In particular, they stated that Ohio laws and the Commission’s oversight over corporate separation plans and codes of conduct will be adequate to avoid preferential outcomes for non-regulated entities.⁴

The Commission correctly recognizes that there is the *opportunity* for decisions made on behalf of the jurisdictional EDU to provide preferential outcomes for non-regulated entities, specifically EDU affiliates. This is not just a theoretical opportunity either. All Ohio EDUs currently

¹ As a member of the Retail Energy Supply Association, Direct Energy filed initial comments on July 8, 2013, in response to the Commission questions posed on June 5, 2013. Direct Energy joins the Retail Energy Supply Association again in filing reply comments this same day, but also provides these reply comments separately.

² The FirstEnergy EDUs are: The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company.

³ FirstEnergy Comments at 12; DP&L Comments at 4; Duke Comments at 7.

⁴ *Id.*

share certain employees with their affiliates,⁵ through unique service companies, and those shared employees are responsible for a myriad of functions, including accounting, information technology, forecasting, legal services, and human resources. These shared employees have dual loyalties because they work for both the EDU and the EDU's affiliates.

One readily identifiable example of decisions made on behalf of the jurisdictional EDU that could provide preferential outcomes for its non-regulated affiliates is with shared employees who have been used by the EDU in the planning/designing/litigating of the EDU electric security plan ("ESP") and who also works for the EDU's affiliate. The opportunity readily exists for information to flow to/from the EDU and its affiliate improperly. Shared employees should not be involved in the planning/designing/litigating of an ESP.⁶ Instead, an ESP should be planned/designed/litigated by utility-only employees to ensure complete separation of knowledge and information. Respecting that the entities flow into one corporate parent, it must be recognized the ESP creates the landscape by which the competitive market in that territory will work in the future, and any potential for favoring one competitive retail electric service provider over another during the ESP process should be avoided.

However, the Commission's rules allow for shared employees, without regard to involvement in the ESPs. Plus, the Commission's current code of conduct rules, contained in Rule 4901:1-20-16(G)(4), Ohio Administrative Code, do not address this situation. Despite the arguments made by the FirstEnergy EDUs, DP&L and Duke in this proceeding, the current corporate separation plans and codes of conduct will not be adequate. For these reasons, Direct

⁵ The Commission allows an EDU to share an employee with any of its affiliates, so long as the sharing does not violate any of the Commission's code of conduct rules. See, Rule 4901:1-20-16(G)(1)(b), Ohio Administrative Code.

⁶ For purposes of this discussion, legal representation should be exempted.

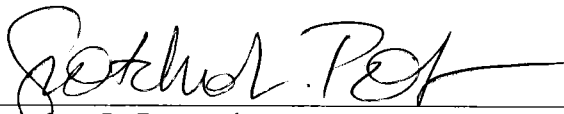
Energy recommends that the Commission establish restrictions regarding who can plan/design an ESP before a case commences, and establish the following restrictions as well:

- (a) A shared employee who was part of the ESP planning/designing process prior to the ESP filing may not conduct work for an EDU's affiliate in the designing or planning of products related to competitive retail electric service until either the ESP is approved and implemented, or the ESP is disapproved.
- (b) A shared employee may not negotiate, advise, or participate in the ESP case on behalf of the EDU affiliate, unless the other parties to the case approve.
- (c) No EDU may offer something in its ESP proceeding to the EDU's affiliate that is not also offered to other parties in the ESP case.

Conclusion

In summary, Direct Energy urges the Commission to implement additional restrictions, as outlined above, to preclude use of shared employees in the planning, designing, and litigating of ESPs. Just utility-only personnel should be involved in the planning, designing, and litigating of ESPs since those plans have such a significant impact on the marketplace.

Respectfully submitted,

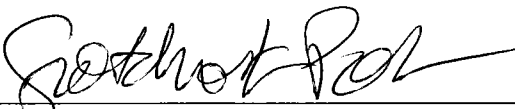


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*On Behalf of Direct Energy Services LLC and Direct
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was served by electronic mail this 22nd day of July 2013 upon the persons listed below.



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Summary: Reply Comments electronically filed by Mrs. Gretchen L. Petrucci on behalf of Direct Energy Services LLC and Direct Energy Business LLC