

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY OF DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS,
LLC TO DUKE ENERGY OHIO’S MEMORANDUM CONTRA MOTION TO
INTERVENE OF DIRECT ENERGY SERVICES, LCC AND DIRECT ENERGY
BUSINESS, LLC**

Pursuant to Rule 4901-1-12(B)(2) of the Ohio Administrative Code, Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”) hereby files its Reply to Duke Energy Ohio’s Memorandum Contra Direct Energy’s Motion to Intervene in this proceeding.

A. Introduction

On June 28, 2013, Duke Energy Ohio filed an Application to Adjust Riders DR-IM and Rider AU for 2013 Grid Modernization Costs. On July 17, 2013, the Attorney Examiner set a procedural schedule, including a September 19, 2013 deadline for filing Motions to Intervene. The Ohio Consumers Counsel filed a Motion to Intervene on July 19, 2013. The Ohio Partners for Affordable Energy filed a Motion to Intervene on September 13, 2013. Direct Energy and First Energy Solutions, respectively, filed Motions to Intervene on September 19, 2013. Direct Energy and FirstEnergy Solutions are the only competitive retail electric supply (“CRES”) providers to request intervention in this proceeding.

Also on September 19, 2013, Staff filed a Motion for Extension of Time, specifically requesting an extension of the entire procedural schedule by twenty-eight (28) days. On September 24, 2013, Duke Energy Ohio filed a Memorandum Contra the Motions to Intervene of

Direct Energy and First Energy Solutions. Direct Energy hereby files its timely Reply to Duke Energy Ohio's Memorandum Contra.

B. Direct Energy's Motion to Intervene Should be Granted.

Direct Energy's Motion to Intervene demonstrated it met the criteria to intervene in this proceeding. Direct Energy hereby incorporates by reference its September 19, 2013 Motion to Intervene into this Memorandum Contra. Direct Energy is a party familiar to this Commission whose interests are well known and who has continually been granted intervention to participate in Commission proceedings. Direct Energy's real and substantial interest in this proceeding is evident and its Motion to Intervene should be granted.

Duke Energy Ohio's Memorandum Contra challenges Direct Energy's intervention on the grounds that: Direct Energy has not intervened in the prior proceedings to update Riders AU and DR-IM¹; the application has no impact on Direct Energy²; the proceedings will have no impact on shopping or competition in Duke Energy Ohio's service territory³; and Direct Energy's intervention will unduly prolong or delay the proceeding⁴. Duke Energy Ohio also alleges that any "matter of concern (to Direct Energy) can be managed through discussion at the Duke Energy Ohio SmartGrid Collaborative."⁵

Contrary to Duke Energy Ohio's assertion that Direct Energy has not intervened in proceedings over the past four years to update Riders AU and DR-IM, Direct Energy was in fact granted intervention (without opposition by Duke Energy Ohio) in Docket No. 10-2326-GE-RDR and was a signatory party to the Stipulation filed in that proceeding on February 24, 2012 (which was subsequently approved by the Commission in an Opinion and Order on June 13, 2012). As

¹ Duke Energy Ohio Memorandum Contra at p. 2

² Id.

³ Id. at p. 3

⁴ Id.

⁵ Id.

in that proceeding, Direct Energy's interest in this proceeding is its customers' access to advanced metering infrastructure ("AMI meters"), consumer education about AMI meter-enabled products ("time of use products" or "TOU products"), and customers' eligibility to enroll in such products.⁶

In support of its Application, Duke Energy Ohio offers Witness Duff's testimony which notes that increased participation in Duke Energy Ohio's time variant pricing pilots is a sign that the rate structures are appealing to customers and that customers may be becoming more aware and comfortable with the concept of time-differentiated rates.⁷ Witness Duff's testimony also explains that Duke Energy Ohio is proposing a general education and awareness campaign that will last two years and has a total budget of \$850,000.⁸ Unfortunately, shopping customers, including customers of Direct Energy, are not eligible to participate in Duke Energy Ohio's pilot programs and Direct Energy does not yet have access to the interval data captured by AMI meters and therefore does not have the ability to offer TOU products to its customers in Duke Energy Ohio. Further, while all customers will potentially benefit from the general education and awareness campaign, only non-shopping customers will be eligible to enroll in a TOU rate.

Direct Energy does not dispute the fact that Riders AU and DR-IM are distribution services that are properly allocated to all distribution customers. However, Direct Energy has a cognizable interest in advancing its ability to access and utilize interval data captured by AMI meters so that it can offer TOU products to its own current and future customers. It does not advance the competitive market in Ohio for customers to be educated about the benefits of AMI meters and time-differentiated rates if the only TOU product available in the market is offered by

⁶ See, for example, *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust and Set Its Gas and Electric Recovery Rate for 2010 SmartGrid Costs Under Riders AU and Rider DR-IM and Mid-deployment Review of AMI/SmartGrid Program*, Case No. 10-2326-EL-RDR, Stipulation at 11 (February 24, 2012).

⁷ Duff Testimony at p.8

⁸ Id. at p.12

Duke Energy Ohio. The application does have an impact on Direct Energy, its customers, and the competitive market in Duke Energy Ohio's territory. Therefore, the legal positions Direct Energy will advocate are directly related to the merits of Duke Energy Ohio's case. The Commission should grant Direct Energy's Motion to Intervene.

Duke Energy Ohio also claims that Direct Energy's intervention at this junction will unduly prolong or delay the proceeding.⁹ Direct Energy disagrees. As noted previously, Direct Energy participated in the 2010 proceedings without unduly prolonging or delaying that case, even signing the ultimate Stipulation and Recommendation. Further, pursuant to the procedural schedule set by the Attorney Examiner, Direct Energy filed a timely Motion to Intervene on September 19, 2013. That same day, Staff filed a Motion for Extension of Time, specifically requesting an extension of the entire procedural schedule by twenty-eight (28) days. Staff's Memorandum in Support noted that it is still conducting its investigation, awaiting responses to data requests, and that it cannot provide meaningful comments until such responses are provided and reviewed¹⁰. Clearly, since Staff's own investigation and comments have not yet been submitted in this docket, Direct Energy's intervention will not unduly prolong or delay the proceeding and the Commission should grant Direct Energy's Motion to Intervene.

Finally, Duke Energy Ohio suggests that Direct Energy's interests can be represented through discussion at the SmartGrid Collaborative meetings, rather than through intervention in this proceeding¹¹. While Direct Energy appreciates the opportunity to participate in this collaborative and has gained a better understanding of Duke's TOU pilot programs and other smart grid issues through its participation, these meetings are not an adequate substitute for Direct Energy's ability to represent its interests in a formal docket, potentially in a litigated

⁹ Id. at p3.

¹⁰ Staff Memorandum in Support p. 2.

¹¹ Duke Energy Ohio Memorandum Contra at p. 3

hearing, and official Opinion and Order from the Commission. Direct Energy respectfully requests this Commission recognize Direct Energy's ability to provide a significant contribution to the full development and equitable resolution of the factual issues to be determined in this proceeding.

C. Conclusion

The Commission's precedent notes it is the Commission's policy "to encourage the broadest possible participation in its proceedings."¹² And, our Ohio Supreme Court, when reviewing a Commission decision to deny an OCC Motion to Intervene, noted that "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO."¹³ Granting Direct Energy's Motion to Intervene would be consistent with the precedent of both the Commission and the Ohio Supreme Court.

Direct Energy respectfully requests that the Commission grant its Motion to Intervene and that it be made a full party of record.

Respectfully Submitted,

/s/ Jennifer L. Lause

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¹² See, e.g., *Cleveland Elec. Illum. Co.*, PUCO Case No. 85-675-EL-AIR, Entry at 2 (January 14, 1986).

¹³ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853 at ¶20.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Reply to Duke Energy Ohio's Memorandum Contra of Direct Energy Services, LLC and Direct Energy Business, LLC was served this 29th day of September, 2013 by electronic mail delivery upon the persons listed below.

/s/ Jennifer L. Lause

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Summary: Reply of Direct Energy to Duke Energy Ohio's Memorandum Contra electronically filed by Ms. Jennifer L. Lause on behalf of Direct Energy Business, LLC and Direct Energy Services, LLC