

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.)

ENTRY

The attorney examiner finds:

- (1) On June 28, 2013, Duke Energy Ohio, Inc. (Duke) filed an application to adjust Rider Distribution Reliability - Infrastructure Modernization (Rider DR-IM) and Rider Advanced Utility (Rider AU) to allow for recovery of 2012 costs for SmartGrid deployment.
- (2) On July 19, 2013, and September 13, 2013, the Office of the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE), respectively, filed motions to intervene. In its motion, OCC states that it represents Duke's residential consumers and that the interests of these customers may be adversely affected by the outcome of this case. OPAE states, in its motion, that its membership includes a number of non-profit organizations with facilities receiving electric and gas service from Duke and that residential customers, including OPAE's low-income bill payment assistance and weatherization clients, will be affected by Duke's application. Both OCC and OPAE submit that their participation in this matter will not unduly prolong or delay the proceeding. No memoranda contra were filed in response to OCC's or OPAE's motions to intervene. The attorney examiner finds that OCC's and OPAE's motions to intervene are reasonable and should be granted.
- (3) On September 19, 2013, Direct Energy Business, LLC and Direct Energy Services, LLC (jointly, Direct Energy) and FirstEnergy Solutions Corp. (FES) filed motions to intervene. Direct Energy and FES state, in their motions, that they are certified competitive retail electric service (CRES) providers in Ohio. Direct Energy states that it currently provides service to retail customers in Duke's territory. FES states that it serves residential customers through active contracts and government aggregation programs and that it, thus, has a substantial interest in the outcome of this proceeding and in ensuring that

Duke's proposed adjustments to its riders do not adversely affect a customer's ability to shop for electric service and FES' ability to compete as a CRES provider within Duke's service territory. Both Direct Energy and FES state that, pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11(B), Ohio Administrative Code (O.A.C.), they have real and substantial interests in this proceeding. Further, Direct Energy and FES indicate that their participation will advance legal positions that are directly relevant to the merits of the case, contribute to a full development of the factual issues, and will not cause undue delay or prejudice any party. Direct Energy and FES note that no existing party adequately represents their interests.

- (4) On September 24, 2013, Duke filed a memorandum contra Direct Energy's and FES' requests for intervention. In the memorandum contra, Duke argues that Direct Energy's and FES' motions to intervene should be denied because they do not meet the criteria for intervention set forth in Section 4903.221, Revised Code, and Rule 4901-1-11, O.A.C.
- (5) With regard to the first of the intervention criteria required under Section 4903.221, Revised Code, and Rule 4901-1-11, O.A.C., regarding the nature and extent of the prospective intervenor's interest, Duke argues that Direct Energy does not articulate any interest that is impacted by, or relevant to, Duke's application. Duke asserts that Direct Energy merely notes its certification as a CRES provider in Duke's service area, while FES states only that it serves residential customers and has an interest in ensuring that the proposed adjustments do not adversely affect a customer's ability to shop for electric service and FES' ability to compete. Duke argues that FES's motion includes no hint as to how the adjustment of its riders could affect a customer's ability to shop or FES' ability to compete.
- (6) With regard to the remaining criteria listed under Section 4903.221, Revised Code, and Rule 4901-1-11, O.A.C., Duke first argues that Direct Energy and FES have not set forth a legal position and its probable relation to the merits of the case as required by the second criterion. Moreover, Duke notes that, pursuant to the third and fourth criteria, the Commission must consider 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. Duke states that Direct Energy and FES have delayed approximately three months before filing for intervention in this case and that Staff and other intervenors have substantially completed their audits and will soon be submitting reports. Duke argues that Direct Energy's and FES' intervening at this point will unduly prolong and delay the proceeding. Further, Duke contends that, based on their respective motions, Direct Energy and FES do not have any discernible contribution to make to the equitable resolution of the factual issues.

- (7) Duke also argues that any matters of concern to either Direct Energy or FES can be managed through discussion at the Duke Energy Ohio SmartGrid Collaborative. Duke notes that both Direct Energy and FES have been invited to attend meetings of the collaborative since its inception in 2009 and that Direct Energy has only recently availed itself of this opportunity.
- (8) On September 30, 2013, Direct Energy filed a reply to Duke's memorandum contra. In the reply, Direct Energy states that its interest in this proceeding is its customers' access to advanced metering infrastructure (AMI), consumer education about AMI meter-enabled or time-of-use products (TOU products), and customers' eligibility to enroll in such products. Citing the pre-filed testimony of Duke's witness, Timothy J. Duff, in this matter, which notes that increased participation in Duke'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, Direct Energy states that shopping customers, including customers of Direct Energy, are not eligible to participate in Duke's pilot programs. Direct Energy states that it does not yet have access to the interval data captured by AMI meters, and does not have the ability to offer TOU products to its customers in Duke's service territory. Further, Direct Energy notes that only non-shopping customers will be eligible to enroll in a TOU rate.
- (9) Direct Energy also states that it 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. Direct Energy argues that the

competitive market is not advanced if the only TOU products available in the market are offered by Duke. According to Direct Energy, Duke's application has an impact on Direct Energy, its customers, and the competitive market in Duke's territory; therefore, Direct Energy asserts that the legal positions that it will advocate in this matter are directly related to the merits of Duke's case.

- (10) Further, Direct Energy argues that, since Staff's own investigation and comments have not yet been submitted in this docket, and Staff has requested an extension of the entire procedural schedule by 28 days, Direct Energy's intervention will not unduly prolong or delay this proceeding. Direct Energy notes that it participated in Duke's 2010 rider update proceedings, in Case No. 10-2326-GE-RDR, without unduly prolonging or delaying that case.
- (11) Finally, Direct Energy argues that, contrary to Duke's suggestion that Direct Energy's interests can be represented through discussion at collaborative meetings, those meetings are not an adequate substitute for Direct Energy's ability to represent its interests in a formal docket, with a potentially litigated hearing and a formal opinion and order from the Commission. Direct Energy requests that the Commission recognize its ability to provide a significant contribution to the full development and equitable resolution of the factual issues to be determined in this proceeding.
- (12) After considering the arguments advanced for and against intervention in this matter, the attorney examiner finds that Direct Energy and FES have satisfied the intervention criteria set forth in Section 4903.221, Revised Code, and Rule 4901-1-11, O.A.C. Direct Energy and FES have demonstrated a real and substantial interest in this proceeding, which may impact their ability to do business and compete as CRES providers in Duke's service territory. In addition, the Supreme Court of Ohio has held that the intervention criteria should be liberally construed in favor of intervention. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, 865 N.E.2d 940, ¶20. Accordingly, the attorney examiner finds that Direct Energy's and FES' motions to intervene are reasonable and should be granted.

It is, therefore,

ORDERED, That the motions to intervene filed by OCC, OP&E, Direct Energy, and F&S be granted. It is, further,

ORDERED, That a copy of this entry be served upon all parties and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Kerry K. Sheets

By: Kerry K. Sheets
Attorney Examiner

jrj/vrm

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in

Case No(s). 13-1141-GE-RDR

Summary: Attorney Examiner Entry ordering that the motions to intervene filed by Ohio Consumers' Counsel, Ohio Partners for Affordable Energy, Direct Energy Business, LLC and Direct Energy Services, and FirstEnergy Solutions Corp. be granted; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio