

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust its Alternative) Case No. 12-802-EL-RDR
Energy Recovery Rider.)

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

On February 29, 2012, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) initiated the above-captioned proceeding, proposing to maintain existing Alternative Energy Recovery Rider (AER-R) rates in effect for the second quarter of 2012. Thereafter, on February 20, 2013, the Public Utilities Commission of Ohio (Commission) issued an Entry directing the Staff of the Public Utilities Commission of Ohio (Staff) to issue a request for proposal to engage an auditor to audit the Company's alternative energy compliance activities. On May 22, 2013, Baker Tilly Virchow Krause, LLP, (Baker Tilly) was selected to perform the audit. On October 3, 2013, Baker Tilly submitted the Audit of the Alternative Energy Resource Recovery Rider of Duke Energy Ohio, Inc., for the period of January 1, 2012 – December 31, 2012 (Audit Report).

On November 25, 2013, Direct Energy Business, LLC, and Direct Energy Services, LLC, (collectively, Direct Energy) moved to intervene in this proceeding. As Direct Energy indicated in its motion, interventions in Commission proceedings are governed by R.C. 4903.221 and O.A.C. 4901-1-11. However, Direct Energy's motion fails to set forth a sufficient basis for intervention in this proceeding. As Duke Energy Ohio demonstrates herein, Direct Energy's motion 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 states briefly that it is interested in ensuring that Duke Energy Ohio's Alternative Energy Recovery Rider "is calculated appropriately and is applied in a competitively neutral way." Direct further claims an interest in the Audit Report and states that the AER-R may impact the price to compare in the retail electric marketplace, and that there is a discussion related to a "pass-thru" transaction with Duke Energy Retail Services that appears to raise corporate separation issues.

In each of these issues, Direct Energy fails to offer any reason for intervention that is not already an area of inquiry by the Staff. Likewise, Direct Energy fails to recognize that the Audit Report raises none of these issues. Baker Tilly has undertaken a thorough and complete audit of the Company's practices in complying with the law and regulations related to the mandates set forth in Revised Code 4928.64. The audit resulted in eleven recommendations that are the subject of the now-pending case. The Audit Report thoroughly examined the transaction that is evidently of concern to Direct Energy and found no regulatory concern other than a recording error. Thus, there is nothing that Direct Energy can contribute to this proceeding that isn't duplicative of the Staff's involvement or Baker Tilly's formal audit. For these reasons Direct Energy's motion to intervene should be denied.

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's interest in whether or not there is an issue with corporate

separations fails as the audit has been completed and there has not even been a hint of any problem with respect to corporate separation issues. Direct Energy should not be granted intervention, as it is 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 seeks to raise issues that are unrelated to whether or not the Company has complied with the mandates, and whether the accounting for such compliance has been accurately and correctly recorded. The Staff of the Public Utilities Commission of Ohio and its auditor, Baker Tilly, have completed their audit and submitted a report. Direct Energy cannot make any contribution to the development or resolution of factual issues, as the facts have already been investigated and audited by the Staff and its third-party auditor. Thus, intervening at this juncture will, by definition, unduly prolong and/or delay the proceeding. Based upon Direct Energy's motion, Direct Energy has no discernible contribution to make to the equitable resolution of the factual issues.

Moreover, any matters of concern to Direct Energy may be raised, or have been raised, in connection with the Commission's investigation into the status of competition in Ohio's retail electric service market in Case No. 12-3151-EL-UNC. Direct Energy and its competitive rivals have participated in this Commission investigation and have had, and continue to have opportunities to raise concerns of a competitive nature. That open forum provides ample opportunity for robust discussion and an opportunity to be heard on competitive issues before the Commission.

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

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission deny the motion by Direct Energy 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 2nd day of December, 2013, to the following parties.



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Summary: Memorandum Duke Energy Ohio, Inc.'s Memorandum Contra the Motion to Intervene of Direct Energy Business, LLC, and Direct Energy Services, LLC electronically filed by Carys Cochern on behalf of Watts, Elizabeth H. Ms.