

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio)	
Adm.Code Chapter 4901:1-36, Electric)	Case No. 13-0953-EL-ORD
Transmission Cost Recovery Riders)	
 In the Matter of the Review of Ohio)	
Adm.Code Chapter 4901:1-37, Corporate)	Case No. 13-0954-EL-ORD
Separation for Electric Utilities and)	
Affiliates)	
 In the Matter of the Review of Ohio)	
Adm.Code Chapter 4901:1-38, Reasonable)	Case No. 13-0955-EL-ORD
Arrangements for Electric Utility Customers)	

**INITIAL COMMENTS OF DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS, LLC**

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio)	
Adm.Code Chapter 4901:1-36, Electric)	Case No. 13-953-EL-ORD
Transmission Cost Recovery Riders)	

In the Matter of the Review of Ohio)	
Adm.Code Chapter 4901:1-37, Corporate)	Case No. 13-954-EL-ORD
Separation for Electric Utilities and)	
Affiliates)	

In the Matter of the Review of Ohio)	
Adm.Code Chapter 4901:1-38, Reasonable)	Case No. 13-955-EL-ORD
Arrangements for Electric Utility Customers)	

**INITIAL COMMENTS OF DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS, LLC**

I. INTRODUCTION

On April 22, 2013, the Public Utilities Commission of Ohio (“Commission”) issued an Entry in the above-captioned docket and ordered a workshop to elicit stakeholder input on the proposed revisions, which was held on May 7, 2013.

On December 18, 2013, the Commission issued an Entry with Staff’s proposed changes to the rules and set an initial comment deadline of January 17, 2014, and a reply comment deadline of January 24, 2014. Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”) respectfully submits its Initial Comments in this proceeding.

II. INITIAL COMMENTS

Rule 4901:1-36-02 – Transmission cost recovery rider

Rule 4901:1-36-02, Ohio Administrative Code (“O.A.C.”), currently authorizes an electric utility to recover, through a reconcilable rider, all transmission and transmission-related costs. This rule should be amended to limit the rider to costs exclusively allotted to the utility to prevent the possibility of duplication of charges to CRES customers. Direct Energy suggests the rule could be amended to accomplish this task through the following language: “This chapter authorizes an electric utility to recover, through a reconcilable rider on the electric utility’s distribution rates, all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility, net of financial transmission rights and other transmission-related revenues credited to the electric utility, excluding any charge or fee also assigned to a competitive retail electric supply provider and not transferred to the utility via line item transfer, by the federal energy regulatory commission or regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.” The electric utility should recover its reasonable costs; however, it is equally important that customers receiving generation service are not charged the same cost twice and the above amendments to the rule clarify existing practice for utilities and ensure fair representation of transmission costs.

Rule 4901:1-37-04 – Electric Utilities and Affiliates

The proposed rule would benefit from a reiteration of the rules pertaining to affiliate competitive retail electric supply (“CRES”) providers regarding the disclosure of an affiliate relationship. Rule 4901:1-21-05(C)(8)(g), O.A.C., requires a CRES provider to conspicuously disclose an affiliate relationship with an existing Ohio electric utility. Direct Energy proposes

that the same language be included in the structural safeguards of Rule 4901:1-37-04(A), O.A.C. This is an important safeguard in place to prevent customer confusion or unfair competitive advantages. As such, it merits restatement in the section of the rules pertaining to affiliates.

In addition, similar to the order in the 10-2395-GA-CSS proceeding (Interstate Gas Supply, Inc (“IGS”) use of the Columbia Retail Energy trade name)¹, affiliates should be required to provide disclosure of the affiliate relationship near any logo which uses a name similar to the utility. If such a disclosure is appropriate for a non-affiliated company licensing a utility-affiliated name or logo, then similar a requirement for a CRES provider who is actually an affiliate of the utility is even more important to prevent customer confusion.

Rule 4901:1-37-08 – Cost allocation manual and Rule 4901:1-37-04 – General provisions

Among other things, Rule 4901:1-37-04 and Rule 4901:1-37-08, O.A.C., requires the electric utility to maintain a log of all actions that do not comply with the chapter’s stated purpose of this chapter, to prevent any electric utility from gaining a competitive advantage solely because of corporate affiliation. *See* Rule 4901:1-37-02(A), O.A.C. To that end, all electric utilities are required to maintain a cost allocation manual (“CAM”) that includes a copy of all transferred employees’ previous and new job descriptions. As such, Direct Energy requests the rule specifically require the log and CAM to be updated and specifically indicate the employee’s role in an electric security plan (“ESP”) or market rate offer (“MRO”) filing when an electric utility company employee is transferred to an affiliate or broker that had worked on, a pending ESP, MRO, or tariff filing. In addition, such information should be filed within the ESP, MRO or tariff filing. The employee’s knowledge of this filing could be a competitive

¹ *In the Matter of the Complaint of the Ohio Consumers’ Counsel, Stand Energy Corporation, Incorporated, Northeast Ohio Public Energy Council, and Ohio Farm Bureau Federation*, PUCO Case No. 10-2395-GA-CSS, Opinion and Order (August 15, 2012).

advantage over other CRES providers who had no advance knowledge of the filing and its details.

Rule 4901:1-37-03 – Economic development arrangements and Rule 4901:1-38-05 – Unique arrangements

Rules 4901:1-37-03 and 4901:1-38-05, O.A.C., allow for economic development arrangements and unique arrangements between an electric utility and mercantile customers. Although the statute does not explicitly state that the mercantile customer must be taking both distribution and generation services from the electric utility it is implied by its noticeable absence. Direct Energy argues that customers who take generation service from a CRES provider should not be excluded from entering into either an economic development arrangement or unique arrangement related to the customer's distribution service with the electric utility simply because a CRES provider was better able to meet its electric generation needs. Indeed, the Commission recently approved a reasonable arrangement for a mercantile customer related only to distribution service.²

These rules are in place to encourage businesses to maintain operations in the state of Ohio bringing both money and jobs to the state. The Commission, a long time supporter of competition, has enabled mercantile customers to choose a variety of options for its generation services. Doing so should not prevent these customers from participating in either an economic development arrangement or unique arrangement that can help a mercantile customer maintain a profitable business in the state. As such, Direct Energy requests the Commission amend Rule 4901:1-38-03(A), O.A.C., to state: An electric utility, mercantile customer, or group of mercantile customers of an electric utility, regardless of whether the mercantile customer or

² *In the Matter of the Application for Establishment of a Reasonable Arrangement between ASHTA Chemicals Incorporated and The Cleveland Electric Illuminating Company*, PUCO Case No. 12-1494-EL-AEC, Opinion and Order (January 8, 2014).

group of mercantile customers is taking generation service from a CRES provider, may file an application for commission approval for an economic development arrangement between the electric utility and a new or expanding customer or group of customers. Similarly Direct Energy respectfully requests the Commission amend Rule 4901:1-38-05(A), O.A.C. to state: an electric utility may file an application pursuant to section 4905.31 of the Revised Code for commission approval of a unique arrangement with one or more of its customers, consumers, or employees, regardless of whether the mercantile customer or group of mercantile customers is taking generation service from a CRES provider.

III. CONCLUSION

Direct Energy reserves the right to file reply comments in this docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document will be served *via* electronic mail on all parties who submit Initial Comments in Case No. 13-953-EL-ORD, 13-954-EL-ORD and 13-955-EL-ORD when the identities of such parties are known, as well as the parties below on this 17th day of January, 2014.

/s/ Joseph M. Clark

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Summary: Comments (Initial Comments) electronically filed by JOSEPH CLARK on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC