

**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.)	

**MEMORANDUM CONTRA OF DIRECT ENERGY SERVICES, LLC AND DIRECT
ENERGY BUSINESS, LLC TO DUKE ENERGY OHIO’S MOTION TO STRIKE
DIRECT TESTIMONY OF TERESA L. RINGENBACH AND JENNIFER L. LAUSE
AND REQUEST FOR EXPEDITED TREATMENT**

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 Memorandum Contra to Duke Energy Ohio, Inc.’s (“Duke Energy Ohio” or “Company”) Motion to Strike Direct Testimony (“Motion”) and request for expedited treatment in this proceeding.

A. Introduction

On January 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. Direct Energy timely filed a Motion to Intervene on September 19, 2013 and, over the objections of Duke, was granted intervention by the Attorney Examiner on October 23, 2013. Additionally, pursuant to the Attorney Examiner’s July 17, 2013 Entry, Direct Energy timely filed Initial Comments in this docket on October 31, 2013. Reply comments were filed by Duke Energy Ohio and the Ohio Consumers’ Counsel (“OCC”) in November 2013. On January 10, 2014, Direct Energy filed the direct testimony of Jennifer L. Lause and Teresa L. Ringenbach in

opposition to the Stipulation and Recommendation (“Stipulation”) filed in this proceeding.¹ Duke Energy Ohio filed a Motion and Memorandum in Support to strike this testimony on January 16, 2014.

As demonstrated below, Duke Energy Ohio’s arguments should be rejected. Direct Energy respectfully requests the Commission deny Duke Energy Ohio’s Motion.

B. The Issues Raised in Testimony were Presented Throughout the Proceeding.

Duke Energy Ohio first asserts that Direct Energy’s testimony should be stricken because Direct Energy did not raise any of the issues in its testimony in its comments in this proceeding. Duke Energy Ohio claims it has been prejudiced by the alleged omission by Direct Energy.

Even before Direct Energy filed its Initial Comments in this case, Direct Energy raised issues discussed in the January 10, 2014 testimony in its intervention request. In its Reply to Duke Energy Ohio’s Memorandum Contra Direct Energy’s Motion to Intervene, Direct Energy pointed out that competitive retail electric supply (“CRES”) providers do not yet have access to interval data captured by Smart Meters and therefore cannot offer TOU products.² Direct Energy also asserted its “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 Duke Energy Ohio.”³

In its Initial Comments regarding Duke Energy Ohio’s proposed education campaign and pilot program to provide TOU rates utilizing Smart Meter data, Direct Energy pointed to

¹ Direct Testimony of Teresa L. Ringenbach and Direct Testimony of Jennifer L. Lause (January 10, 2014).

² Reply of Direct Energy to Duke Energy Ohio Memorandum Contra at 3 (September 29, 2013).

³ Reply of Direct Energy to Duke Energy Ohio Memorandum Contra at 3-4 (September 29, 2013).

Company Witness Duff's testimony and explained that Duke Energy Ohio is "still in the process of developing its web portal and other procedures to allow CRES providers like Direct Energy to access the interval data captured by AMI meters. Access to such data is a necessary first step in a CRES provider's development and marketing of TOU products to customers in Duke Energy Ohio's territory."⁴ Further, Direct Energy observed that retail competition is the vehicle for dynamic pricing to work.⁵ Direct Energy supported time of use ("TOU") and other dynamic pricing products offered by the market (and not Duke Energy Ohio) "once Duke Energy Ohio completes development of its web portal and other procedures are in place to allow CRES providers like Direct Energy to access the interval data captured by AMI meters."⁶ Direct Energy's comments clearly evidence a desire to access interval data both within and outside the proposed pilot program, which is the same data addressed by the testimony of Ms. Ringenbach and Ms. Lause.

Further, the Comments of the Ohio Consumers' Counsel ("OCC") supported making time-differentiated and dynamic rates available to customers in order to offset some of the costs for the Smart Grid paid for by customers and voiced concerns about whether and when these benefits would be available to customers.⁷ OCC encouraged the Commission to "require Duke to resolve any outstanding issues with CRES providers, so that CRES providers can also begin to offer these enhanced rate options. For example, it is OCC's understanding that there are outstanding issues with CRES providers, so that CRES providers can also begin to offer these enhanced rate options. Who will pay for billing system upgrades for CRES-provided customer

⁴ Initial Comments of Direct Energy at 1-2 (October 31, 2013). (Direct Energy notes that its Initial Comments were unnumbered so this citation, and all others to this document, refers to that particular page of the unnumbered document, as found on the Commission website).

⁵ Initial Comments of Direct Energy at 2 (October 31, 2013).

⁶ Initial Comments of Direct Energy at 2-3 (October 31, 2013).

⁷ Comments of the Ohio Consumers' Counsel at 2-4 (October 31, 2013).

programs is also a matter of contention between Duke and CRES providers. OCC recommends that discussions on such unresolved issues be accelerated through Duke's Grid Modernization Collaborative."⁸ Direct Energy believes this is the accelerated forum in which to resolve these issues.

Duke Energy Ohio, along with the other parties to this proceeding, had sufficient notice of Direct Energy's arguments testified by Teresa L. Ringenbach and Jennifer L. Lause.

Finally, Duke Energy Ohio has until January 29, 2014 to file supplemental testimony in response to the Direct Energy testimony submitted on January 10, 2014. Duke Energy Ohio also has an opportunity at the hearing on February 4, 2014 to cross both witnesses. This allows Duke Energy Ohio over 3 weeks to prepare rebuttal testimony and for cross examination. As a result Duke Energy is not prejudiced and will have had more than sufficient time to prepare a response to Direct Energy's arguments.

C. The Issues Raised in Direct Energy's Testimony are Relevant to This Proceeding

Duke Energy Ohio next claims the issues raised in Direct Energy's testimony are not relevant to this proceeding inasmuch as they have no relevance to the adjustment of Rider AU and Rider DR-IM to allow for the recovery of grid modernization costs.⁹ Duke Energy Ohio's arguments should be rejected for the reasons explained below.

First, Duke itself in its Application and supporting testimony raises issues related to CRES providers supplying TOU and other Smart Meter-enabled products. For example, in support of its Application, Duke Energy Ohio offers Witness Duff's testimony in which he discusses both its plan for a pilot and the activities the company had undertaken to enable CRES

⁸ Comments of the Ohio Consumers' Counsel at 4 (October 31, 2013).

⁹ Motion at 4.

providers to participate in SmartGrid deployment.¹⁰ Witness Duff's testimony also asserts that "The Company has delivered on its commitment to have the billing system functionality to allow CRES providers the capability to offer CRES customers time-differentiated rates consistent with its existing supplier tariff by January 1, 2013."¹¹ Duke Energy Ohio Witness Schneider, Jr. also noted that Duke Energy Ohio is currently offering daily energy usage data to customers via web portal to over 529,000 customers, or roughly 74% of the customer base.¹²

Further, Direct Energy Witness Ringenbach discussed in her testimony how the issues raised by Direct Energy are directly relevant to the rider. Ms. Ringenbach asserts that the information technology costs that Duke may incur to provide the data access requested by Direct Energy should be paid for through Duke's rider.¹³

Duke Energy Ohio again also asserts that Direct Energy did not submit any comments related to what is in its testimony and therefore the testimony is irrelevant. As noted previously in this Memo Contra, Direct Energy did raise data access issues both in its Reply to Duke Energy Ohio's Memorandum Contra Direct Energy's Motion to Intervene and in its Initial Comments. And, again, OCC submitted comments that recommended Duke Energy enable CRES providers to offer enhanced rate options utilizing AMI.¹⁴

In sum, Direct Energy's testimony is relevant to this proceeding, which is not as narrow as Duke would like to define the proceeding, and Duke had plenty of notice as it relates to the issues Direct Energy seeks to pursue in this case.

¹⁰ Direct Testimony of Timothy J. Duff at 10-11 (June 28, 2013).

¹¹ Direct Testimony of Timothy J. Duff at 11 (June 28, 2013).

¹² Schneider, Jr. Direct Testimony of Donald L. Schneider, Jr. at 7 (June 28, 2013).

¹³ Direct Testimony of Teresa L. Ringenbach at 12 (January 10, 2014).

¹⁴ Comments by the Office of the Ohio Consumers' Counsel at 13 (October 31, 2013).

Finally, the narrowness to which Duke would like to limit this case is undermined by the fact that the Stipulation in this case, which Duke signed, contains other items that were not included in the Application or supporting testimony. For example, the Stipulation contains a proposed moratorium on disconnecting customers who refuse to accept installation of a Smart Meter. While Duke Energy Ohio's testimony discusses the low rate of Smart Meter installation refusals and the fact that only three (3) customers have been disconnected for refusing a Smart Meter,¹⁵ the Application nor the testimony contains anything regarding a moratorium on disconnection.¹⁶ The disconnection moratorium has, in Duke's words, "no relevance whatsoever to the adjustment of Rider AU and Rider DR-IM to allow for the recovery of grid modernization deployment costs"¹⁷ yet is a part of this case through the Stipulation. Direct Energy's arguments have at least as much relevance as a disconnection moratorium for Smart Meter installation refusal.

D. The Matters Raised by Direct Energy Are Timely

Finally, Duke Energy Ohio points to the Commission's investigation in the 12-3151-EL-ORD docket ("12-3151 docket") as proof that Direct Energy's testimony is untimely. Duke Energy Ohio asserts that the issues raised in the testimony are premature for a decision here in light of the Staff Report in the 12-3151 docket and that the issues raised by Witness Ringenbach and Witness Lause are too undefined for a Commission decision.¹⁸

Witness Ringenbach's testimony addresses this anticipated criticism head-on. The response to this line of attack and the strength of that argument remains the same notwithstanding

¹⁵ Direct Testimony of Donald L. Schneider, Jr., at 7 (June 28, 2013).

¹⁶ Direct Energy acknowledges that OCC proposed a moratorium on disconnecting customers who refuse a Smart Meter installation in its Reply Comments (at 3) in this case (November 14, 2013).

¹⁷ Motion at 4.

¹⁸ Motion at 5-6.

the fact that the Staff Report in the 12-3151 docket was filed after Ms. Ringenbach's testimony was filed. Specifically, Witness Ringenbach observed this the logical docket in which to address these issues. The 12-3151 docket does not appear to be the actual vehicle in which any utility will more fully explore the important issues raised in the testimonies of Ms. Ringenbach and Ms. Lause and acknowledged by the Staff Report.¹⁹ New dockets appear to be required to implement anything the Commission requires through the 12-3151 docket. This docket is the appropriate pre-developed vehicle and provides record support for implementation of the data access issues.²⁰ Further, Ms. Ringenbach accounts for the fact that this particular docket be subject to future orders in those dockets if any additional changes come out in other dockets.²¹

Duke Energy Ohio, to its credit, is in a unique situation that also counsels in favor of hearing the arguments of Direct Energy in this docket. Duke Energy Ohio will have a full Smart Meter rollout by the middle of 2014.²² Duke Energy Ohio is far and away the furthest along in its rollout of Smart Meters as compared to the other Ohio electric distribution companies. Handling these items in this docket gives the Commission a place to approve these market enhancements, gives CRES providers in Duke's territory a head start on implementing these important market enhancements, and gives customers quicker access to the improved products (and possibly services) that might be provided by using the Smart Meters installed in their premises. Waiting for the other dockets to develop may make sense for other utilities because their Smart Meter rollout programs lag so far behind. However, to wait in this docket would

¹⁹ 12-3151 docket, Staff Report at 23 (January 16, 2014).

²⁰ Direct Testimony of Teresa L. Ringenbach at 7 (January 10, 2014).

²¹ Direct Testimony of Teresa L. Ringenbach at 7 (January 10, 2014).

²² Direct Testimony of Donald L. Schneider at 4 (June 28, 2013).

deprive Duke Energy Ohio customers of a streamlined opportunity to begin to put their new Smart Meters to use promptly.

Finally, Duke Energy Ohio claims that Witness Lause's testimony should be stricken inasmuch as Duke Energy Ohio did not propose in its Application or testimony to develop the Metering Data Management ("MDM") System enhancements suggested by Ms. Lause and that Duke would have to develop a plan to implement what Ms. Lause suggests.²³ However, Duke Energy Ohio included an entire witness testimony on its Grid Modernization Program Structure and how Duke goes about planning for its grid modernization initiatives.²⁴ Witness Lause's testimony describes the need for Phase 1 of the MDM System and discusses Duke's progress towards the items that should be contained in Phase 1. Witness Lause also acknowledges the need for additional planning for Phases 2 and 3 of the MDM System.²⁵ Witness Lause's testimony is relevant, timely, and should be considered by the Commission.

E. Conclusion

Direct Energy respectfully requests the Commission deny Duke Energy Ohio's Motion for the reasons contained herein.

Respectfully Submitted,

/s/ Joseph M. Clark

Joseph M. Clark

21 E. State St., Suite 1950

Columbus, OH 43215

Tel. (614) 220- 4369 ext. 221

Fax (614) 220-4674

joseph.clark@directenergy.com

Attorney for Direct Energy Services, LLC and
Direct Energy Business, LLC

²³ Motion at 6.

²⁴ See Direct Testimony of Mark Wimberly (June 28, 2013).

²⁵ Direct Testimony of Jennifer L. Lause at 7 (January 10, 2014).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Memorandum Contra of Direct Energy Services, LLC and Direct Energy Business, LLC was served this 23rd day of January, 2014 by electronic mail delivery upon the persons listed below.

/s/ Joseph M. Clark

Joseph M. Clark

Amy B. Spiller
Elizabeth H. Watts
Duke Energy Ohio, Inc.
155 East Broad Street, 21st Floor
Columbus, Ohio 43215
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

Terry Etter
The Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
etter@occ.state.oh.us

Collen L. Mooney
Ohio Partners for Affordable Energy
1431 Mulford Road
Columbus, Ohio 43212
cmooney2@columbus.rr.com

Mark A. Hayden
Scott J. Casto
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com
scasto@firstenergycorp.com

Devin D. Parram, Assistant Attorney General
Office of the Ohio Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
devin.parram@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/23/2014 1:35:31 PM

in

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

Summary: Memorandum Contra Duke Energy Ohio Motion to Strike electronically filed by JOSEPH CLARK on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC