

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) By Entry issued October 23, 2013, the Office of the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), Direct Energy Business, LLC and Direct Energy Services, LLC (jointly, Direct Energy), and FirstEnergy Solutions Corp. (FES) were granted intervention.
- (3) By Entry issued December 17, 2013, the procedural schedule in this matter was continued for a third time, and the attorney examiner established January 10, 2014, as the deadline for the filing of Staff and intervenor testimony, January 29, 2014, as the deadline for Duke to file supplemental testimony, and February 4, 2014, as the hearing date.
- (4) On January 10, 2014, Duke, Staff, OCC, OPAE, and FES filed a stipulation and recommendation.
- (5) On January 10, 2014, Direct Energy filed the direct testimony of Jennifer L. Lause and Teresa L. Ringenbach.
- (6) On January 16, 2014, Duke filed a motion to strike the direct testimony of Direct Energy witnesses Ringenbach and Lause, and a request for expedited treatment. In the memorandum in support of the motion, Duke states that the direct testimony of Ms. Ringenbach and Ms. Lause raises issues not preserved for litigation by Direct Energy's comments in this proceeding, and addresses topics that are outside the scope of this proceeding and irrelevant to the subject matter of this case. Duke states

that the testimony of Direct Energy's witnesses does not raise any of the issues that were in Direct Energy's comments in this proceeding. As a result, Duke is significantly prejudiced in not having an adequate opportunity to respond to Direct Energy's current arguments in its witnesses' testimony.

- (7) Duke argues that the testimony submitted by Theresa L. Ringenbach and Jennifer L. Lause concerns access to customer information, customer privacy and security, interval load data access for competitive retail electric supply (CRES) providers, and the sharing of such information. However, these matters have no relevance whatsoever to the adjustment of Rider AU and Rider DR-IM to allow for the recovery of grid modernization deployment costs.
- (8) Duke also argues that the matters raised in the testimony of Direct Energy's witnesses are not timely. Duke notes that the Commission is currently considering the issues raised in the Direct Energy testimony in a separate docket, *In re Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI (*Electric Market Case*). Duke argues that Direct Energy now seeks immediate answers to questions not yet resolved by the Commission. Moreover, Direct Energy does so in this single-utility docket, without allowing the Commission to work with industry participants to find solutions to some of the questions that have been raised about customer data.
- (9) Finally, Duke notes that Direct Energy witnesses Lause and Ringenbach seek, through their testimony, processes, procedures, and data infrastructure that go well beyond the capabilities of Duke's system. Duke argues that it has not proposed any changes with respect to CRES data processes in this proceeding, and the record has not been developed to enable such determinations. Duke argues that Direct Energy's requests are far afield of the matters involved in this proceeding and generally are not timely, in that many of the issues raised must be addressed more substantively by the Commission in other dockets. Duke, therefore, requests that the testimony of Direct Energy's witnesses in this proceeding be stricken.

- (10) On January 23, 2014, Direct Energy filed a memorandum contra Duke's motion to strike. In the memorandum contra, Direct Energy states that the issues raised in the testimony of its witnesses were presented throughout the proceeding. Direct Energy argues that, even before its initial comments were filed in this case, it raised issues in its intervention request that are now discussed in the January 10, 2014 testimony of its witnesses. Direct Energy notes that, in its reply to Duke's memorandum contra Direct Energy's motion to intervene, it pointed out that CRES providers do not yet have access to interval data captured by Smart Meters and therefore cannot offer time-of-use (TOU) products. Also, Direct Energy asserted in that pleading its interest in advancing its ability to access and utilize interval data captured by advanced metering infrastructure (AMI) meters, so that it can offer TOU products to its own current and future customers.
- (11) Direct Energy states that its initial comments do note Duke's development of its web portal and other procedures to allow CRES providers, like Direct Energy, to access the interval data captured by AMI meters. Further, Direct Energy states that access to such data is a necessary first step in a CRES provider's development and marketing of TOU products to customers in Duke's territory. Direct Energy argues that its 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 its witnesses, Ms. Ringenbach and Ms. Lause.
- (12) Direct Energy states that Duke, along with the other parties to this proceeding, had sufficient notice of Direct Energy's arguments testified to by its witnesses Ringenbach and Lause. In this regard, Direct Energy argues that Duke has until January 29, 2014, to file supplemental testimony in response to Direct Energy's testimony submitted on January 10, 2014, and that Duke also has an opportunity at the hearing on February 4, 2014, to cross examine both witnesses. Direct Energy notes that this allows Duke over three weeks to prepare rebuttal testimony and for cross-examination. Direct Energy argues that, as a result, Duke is not prejudiced and will have had more than sufficient time to prepare a response to Direct Energy's arguments.

- (13) Direct Energy argues that the issues raised in the testimony of its witnesses are relevant to this proceeding. Direct Energy notes that Duke, in its application and supporting testimony, raises issues related to CRES providers supplying TOU and other Smart Meter-enabled products. Direct Energy, thus, argues that the testimony of its witnesses is relevant to this proceeding, which is not as narrow as Duke would like to define the proceeding, and that Duke did have notice as it relates to the issues Direct Energy seeks to pursue in this case.
- (14) Direct Energy further argues that the narrowness to which Duke would like to limit this case is undermined by the fact that the stipulation in this case contains other items that were not included in the application or supporting testimony. Direct Energy notes that the stipulation contains a proposed moratorium on disconnecting customers who refuse to accept installation of a Smart Meter. Direct Energy argues that its arguments have at least as much relevance as a disconnection moratorium for Smart Meter installation refusal.
- (15) With regard to Duke's argument that the Commission's investigation in the *Electric Market Case* is proof that the testimony of Direct Energy's witnesses is untimely, Direct Energy notes Ms. Ringenbach's observation in her testimony that new dockets appear to be required to implement anything the Commission requires through the *Electric Market Case*, that this docket is the appropriate pre-developed vehicle for that implementation, and that it provides record support for the application of the data access issues. Direct Energy argues that waiting in this docket for other dockets to develop would deprive Duke customers of a streamlined opportunity to begin to put their new Smart Meters to use promptly.
- (16) The attorney examiner has examined the information contained in Duke's motion to strike and Direct Energy's memorandum contra. At this time, the attorney examiner finds that Duke's motion to strike the testimony of Direct Energy witnesses Ringenbach and Lause should be denied. Upon review of the pleadings, it is evident that the issues raised in these witnesses' testimony was mentioned by intervenors in their comments; therefore, while the comments are not necessarily determinative of the scope of this proceeding, the attorney examiner believes that Duke did have notice that parties were

interested in these issues. As to whether, ultimately, the issues raised in the testimony submitted by Direct Energy should be considered in this case, the attorney examiner finds that decision should be made by the Commission. Accordingly, Direct Energy may present its witnesses at the February 4, 2014 hearing and they will be subject to cross examination.

It is, therefore,

ORDERED, That Duke's motion to strike the direct testimony of Direct Energy's witnesses, Teresa L. Ringenbach and Jennifer L. Lause, be denied, at this time. It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Kerry K. Sheets

By: Kerry K. Sheets  
Attorney Examiner

jrj/vrm

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

Summary: Attorney Examiner Entry ordering that Duke's motion to strike the direct testimony of Direct Energy's witnesses, Teresa Ringenbach and Jennifer L. Lause, be denied at this time; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio