

**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.)	

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

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I. INTRODUCTION

A. Importance of This Case

This case presents the Commission an opportunity to enable CRES providers the ability to offer innovative advanced meter enabled products to the Ohio market. Duke will be the first utility in Ohio to reach full deployment of advanced metering in their service territory. However, Duke customers will still not be able to utilize their meters in a way that can have a meaningful impact on their bills. This case will affirm not only that Duke should allow customers to have the full value of the meters they are paying for but to also continue to fulfill the requirements of Section 4928.02, Revised Code, by giving customers choice of time of use products beyond the utility pilot. Duke's current system, built with ratepayer funds, limits customer choices to a single unpopular seasonal pilot and also lacks the capability to allow customers to choose alternative products from CRES providers in the future. If Ohio wants a truly open and competitive retail electric market then a customer's right to a CRES provider product should not be limited. If a customer chooses to allow a CRES provider to access interval data to serve the customer then the utility should be required to have the capability to allow the customer to make that choice. The Commission should direct Duke Energy Ohio to utilize and expand its system

with customer choice in mind, allowing CRES providers to offer customers dynamic pricing products and to implement changes to allow customers to take advantage of products that rely on interval data starting June 1, 2014.

B. Procedural History

On January 28, 2013 Duke Energy Ohio (“Duke”) 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 Services, LLC and Direct Energy Business, LLC (collectively, “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, a Stipulation and Recommendation (“Stipulation”) was filed in this case.

On January 10, 2014, Direct Energy filed the direct testimony of Jennifer L. Lause and Teresa L. Ringenbach in opposition to the Stipulation. On January 30, 2014, the Attorney Examiner denied a Duke Energy Ohio Motion to Strike this testimony. A hearing was held on February 4, 2014. Direct Energy hereby submits its Initial Brief to the Public Utilities Commission of Ohio (“Commission”).

II. ARGUMENT

A. The Commission should amend the Stipulation as suggested by Direct Energy.

The ultimate consideration for the Commission in reviewing a stipulation is whether the stipulation is reasonable and should be adopted. In order to determine the reasonableness of a stipulation, the Commission reviews the stipulation, as a package, and looks at three (3) criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?¹

As demonstrated further below, the Commission should amend the Stipulation to ensure it meets the Commission's criteria for the approval of settlements. Direct Energy does not challenge the first prong of the criteria related to serious bargaining among capable, knowledgeable parties. However, the Stipulation does not benefit ratepayers, is not in the public interest, and violates important regulatory principles or practices.² The Commission should rectify the omissions from the Stipulation that would bring the Stipulation in line with the Commission's criteria for the approval of settlements.

The Commission should amend the Stipulation as follows:

- 1) Require Duke to provide bill quality interval data to CRES providers who have proper customer authorization starting June 2014 through its CRES portal.
- 2) Require Duke to reserve the 90,000 meter capability of its MDM Phase 2 system for customers who enroll in a CRES provider AMI meter-enabled product.
- 3) Require Duke to provide bill quality interval data in a timely manner to allow for CRES providers to bill products chosen by the customer.
- 4) Require Duke to provide a plan and work with stakeholders to expand its MDM Phase 2 system to accommodate all customers with deployed and certified AMI meters.

¹ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review*, Case No. 10-2326-GE-RDR, Opinion and Order at 25-26 (June 13, 2012).

² Direct Energy Exhibit 1 at 5 (Direct Testimony of Teresa L. Ringenbach) and Direct Energy Exhibit 2 at 4-5 (Direct Testimony of Jennifer L. Lause).

- 5) Require Duke to begin work to allow for EDI transfer of bill quality interval data and allow \$1,368,000 in recovery from Rider DR-IM for this project.
- 6) Require Duke to permit CRES providers to obtain customer consent to receive the customer interval energy consumption/load data through a conspicuous disclosure in the terms and conditions of service for the contract.
- 7) Declare that Duke's tariff sufficiently protects customer interval usage data from disclosure by CRES providers and accept Direct Energy's proposal for additional customer consent until another rule is in place.
- 8) Require Duke to implement the minimum Phase 1 customer interval usage data capabilities suggested by Direct Energy for CRES providers to receive customer interval usage data.
- 9) Require Duke to work with Stakeholders to implement Priority Phase 2 and Priority Phase 3 capabilities by June 2018.

The Stipulation is unreasonable, not in the public interest, nor benefits ratepayers because it lacks these items and therefore limits customers' choice of advanced metered products to only that of the utility pilot. The changes supported by Direct Energy would provide up to 90,000 Duke ratepayers the opportunity to take advantage of the full benefits of their AMI meters they paid for soon as soon as June 2014 for many customers and soon after full deployment in the middle of this year for the remaining customers.³ The timing of this case so close to full deployment, when combined with the fact that this case resolves how customers pay Duke for AMI meters, is a part of why it is not in the public interest and does not benefit ratepayers to omit these issues from the Stipulation. Without these changes Duke ratepayers who want to use their

³ Direct Energy Exhibit 1 at 6.

smart/AMI meter(s) (hereinafter “AMI meter”) to their advantage by accepting an offer from a competitive retail electric service (“CRES”) provider for time-differentiated or dynamically priced products will not be able to at all. Additionally, the changes would benefit ratepayers and be in the public interest inasmuch as they would detail protection of customer information by CRES providers and provide important disclosures regarding CRES provider access to customer interval usage data.⁴

These changes would also remedy the Stipulation’s failure (as a package) to follow Ohio’s state policies enumerated in Section 4928.02, Revised Code. Specifically, the Stipulation’s failure to include the items supported by Direct Energy violate Section 4928.02, Revised Code, in the following manner:

- Deprives customers of the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;⁵
- Fails to ensure diversity of electricity supplies and suppliers and does not give consumers effective choices over the selection of those supplies and suppliers;⁶
- Fails to encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;⁷

⁴ Direct Energy Exhibit 1 at 6.

⁵ Section 4928.02(B), Revised Code.

⁶ Section 4928.02(C), Revised Code.

⁷ Section 4928.02(D), Revised Code. (*Emphasis added*).

- Does not recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;⁸
- Fails to ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;⁹
- Fails to provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;¹⁰ and
- Fails to encourage the education of small business owners in Ohio regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses.¹¹

Finally, as an alternative if the Commission does not feel comfortable issuing such an order applicable to all CRES providers without an initial test period in Duke Energy Ohio's service territory, the Commission should permit Direct Energy to access customer interval usage data on a 24 month pilot basis under the conditions suggested by Direct Energy and, if it chooses be applicable to all interested CRES providers, direct Duke Energy Ohio to promptly implement necessary information technology upgrades to effectuate the proposed pilot.¹² As Duke pointed out repeatedly, Direct Energy is the only CRES provider to request interval customer energy usage data therefore Duke Energy Ohio should have no concern with multiple suppliers in the

⁸ Section 4928.02(G), Revised Code.

⁹ Section 4928.02(H), Revised Code.

¹⁰ Section 4928.02(J), Revised Code.

¹¹ Section 4928.02(M), Revised Code.

¹² Direct Energy Exhibit 1 at 7-8.

pilot.¹³ If the Commission is concerned that the Duke Energy system may need to be tested prior to a full roll out, Direct Energy is willing to partner with Duke for this project. The Commission only need allow the pilot to bring advanced products, a test of Duke's system, and reporting on consumer reaction sooner rather than several years from now.

Then, as a requirement of the pilot, on a yearly basis during the same month that the original Order in this case is approved, Direct Energy, Duke, and Staff should be required to submit a report (under seal) to the Commission with the following information: number of Direct Energy products in the market utilizing interval load data, number of customers on each product by month for the previous 12 months, individual customer response, and results of efficiency aspects of any products designed to reduce load. Direct Energy would work with Staff and Duke to resolve any mechanical or other details to implement the pilot.¹⁴

B. The Commission should order Duke Energy Ohio to provide bill quality customer interval energy consumption/load data to CRES providers who have acquired proper customer consent.

Under the current paradigm, regardless of the type of meter, Duke only provides to CRES providers a customer's total lump sum monthly load after the customer's monthly meter read.¹⁵ Direct Energy has the capability to bring new and innovative products to the market which will impact a customer's total bill rather than simply a per kilowatt hour ("kWh") price. However, these products rely on more granular interval data than the total lump sum monthly load received today by CRES providers.¹⁶ Duke Energy Ohio has the ability to provide this information to

¹³ Duke Energy Ohio Exhibit 5 at 11 (Direct Testimony of Jared Lawrence); Duke Energy Ohio Exhibit 7 at 6 (Schneider, Jr. Supplemental Direct Testimony); Tr. at 36 .

¹⁴ Direct Energy Exhibit 1 at 6.

¹⁵ Direct Energy Exhibit 1 at 8.

¹⁶ Direct Energy Exhibit 1 at 8.

CRES providers¹⁷ – **but the Commission has not explicitly authorized Duke to provide, with proper customer consent, customer interval energy usage data to CRES providers.**¹⁸

Duke will fully deploy AMI meters within its service territory by the middle of 2014.¹⁹ Currently Duke is approximately 95-97% complete with the deployment.²⁰ The AMI meters deployed by Duke are capable of providing the more granular interval data needed to offer new products in the Duke market. The most basic of these products require hourly interval data reported to a CRES provider on a daily and monthly basis.²¹ Duke has indicated the AMI meters it is deploying relay data back to Duke once per day in 15 minute increments.²²

As also explained by Direct Energy Witness Ringenbach, power is priced and scheduled by hour in the market, or for CRES products in even smaller increments.²³ Customer energy usage data in smaller increments than a single, lump sum monthly reading is often times called “interval” data. By having hourly (or more frequent interval) load provided daily, CRES providers can show customers how much energy was used in a more specific period of time and the corresponding cost of that energy, allowing the customer to adjust and change their usage pattern to either reduce use before the end of the billing period or to off peak/reduced price times.²⁴ How often the customer is updated on their usage status would depend on how often the CRES provider receives load data and the customer agrees to receive that data.²⁵ Today

¹⁷ Duke Energy Ohio Exhibit 7 at 5-6; Duke Energy Ohio Exhibit 5 at 9.

¹⁸ Duke Energy Ohio Exhibit 5 at 8-9; Tr. at 18-20.

¹⁹ Duke Energy Ohio Exhibit 6 at 3-4.

²⁰ Tr. at 25.

²¹ Direct Energy Exhibit 1 at 8.

²² Direct Energy Exhibit 1 at Attachment 1; Tr. at 30.

²³ Direct Energy Exhibit 1 at 9.

²⁴ Direct Energy Exhibit 1 at 9.

²⁵ Direct Energy Exhibit 1 at 9.

customers receive a bill after the fact for a total month's load, leaving the customer no options to change their load or even identify anomalies in load and fix them to avoid excessive charges.

Direct Energy Witness Ringenbach described a more advanced product, called Power to Go, that could be available to customers interested in more actively managing their energy use.²⁶ This product allows customers to pre-pay their energy and costs and receive a daily notification on the amount of energy used and the actual amount spent for energy. This notification allows a customer to take daily action, such as turning down the air conditioning or turning off the television, etc. and see a next day change in their energy costs. A customer can control their comfort with their costs rather than guess at the correct temperature to cool and wait for a bill 30 days later to see if their guesstimate was correct.

Duke has the ability to provide the billing quality customer interval energy usage data Direct Energy seeks. Without access to this data CRES providers cannot enable customers to use their AMI meters to select products that best fit their needs and impact their bills. The package that is the Stipulation and its failure to require Duke to provide the interval customer energy usage data is unreasonable and not in the public interest inasmuch as it continues to deny customers the ability to use the AMI meters paid for through Rider DR-IM and Rider AU to impact their bills.

The Stipulation, as a package, also violates Section 4928.02, Revised Code. Specifically, the Stipulation's failure to provide bill quality interval data to CRES providers fails, among other things, to: provide customers with the opportunity to enroll on products they elect to meet their respective needs²⁷ and ensure diversity of supplies and suppliers by giving customers effective

²⁶ Direct Energy Exhibit 1 at 9-10.

²⁷ Section 4928.02(B), Revised Code.

choices over their generation supply.²⁸ This lack of data also discourages innovation and market access for cost effective retail electric service, including time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure²⁹ and ignores the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.³⁰ Finally, this lack of data precludes offering of innovative products to small business owners that would educate them about energy efficiency in their businesses.³¹

The Commission should remedy the flaws in the Stipulation package and require Duke to provide to CRES providers, with appropriate authorization, billing quality customer interval energy usage data.

C. The Commission should address in this docket the data access issues raised by Direct Energy.

While the Commission has not explicitly stated that interval data be provided to CRES providers,³² the Commission's rules do not prohibit CRES providers from receiving customer interval usage data either. Witness Ringenbach presented in her testimony several products offered by Direct Energy in other states that can only exist with bill quality interval data. Duke cites to rulemakings and lack of an explicit Commission order as barriers to providing the information Direct Energy seeks. The Attorney Examiner already denied a Motion to Strike Direct Energy's testimony based on those arguments and the Commission should take up Direct Energy's arguments in this case.

²⁸ Section 4928.02(C), Revised Code.

²⁹ Section 4928.02(D), Revised Code.

³⁰ Section 4928.02(G), Revised Code.

³¹ Section 4928.02(M), Revised Code.

³² Direct Energy Exhibit 1 at 6-7; Duke Energy Ohio Exhibit 5 at 9-10; Tr. at 19-20

As explained by Witness Ringenbach, Direct Energy is not jumping the gun on these issues.³³ While acknowledging data access issues are being discussed in other dockets, Direct Energy believes the Commission should take the opportunity in this docket to move these issues forward. Doing so in this docket and limited to this one utility makes sense inasmuch as Duke is the furthest along of the Ohio electric distribution utilities in smart meter deployment.³⁴ Even if the Commission does address the data access issues identified in this case in one or more of those dockets, it seems unlikely that those dockets would be where individual electric distribution utilities will actually implement the Commission's decisions on the data access issues.³⁵ In that circumstance, Direct Energy would be in favor of an order in this case acknowledging that possibility and making any order in this case subject to any future order in those dockets.³⁶

Further, it appears from the posture of those dockets that a separate case to implement anything that would come out of those dockets will be required. Therefore, this case serves as a pre-developed vehicle and provides record support for implementation of the data access issues should the Commission agree with Direct Energy on the items presented to the Commission in this case for decision. By putting this record in this case, it 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.

³³ Direct Energy Exhibit 1 at 6-7.

³⁴ Direct Energy Exhibit 1 at 6-7.

³⁵ Direct Energy Exhibit 1 at 7.

³⁶ Direct Energy Exhibit 1 at 7.

D. The Commission should amend the Stipulation to require Duke, by June 1, 2014, to provide billing quality customer interval energy usage data to CRES providers through a flat file for the purpose of billing on AMI products by manually moving customers to Duke MDM Phase 2.

Direct Energy Witness Ringenbach suggested in direct testimony that Duke be required to provide flat files (e.g. an Excel file) with hourly interval customer energy usage data to CRES providers within six (6) months of the Commission's Opinion and Order in this case.³⁷ Witness Ringenbach also explained that a flat file is not an ideal way to transfer this information to CRES providers. The flat file transfer creates another step to download information from Duke to our system that does not exist for EDI transactions.³⁸ With a flat file transfer, there is a secure system which transfers data into Direct Energy's system that (once downloaded) re-edits the information into EDI in order to submit the load information along with pricing back to Duke for bill ready billing.³⁹ Direct Energy would expect similar CRES provider system gymnastics to process flat files. As customer counts grow, the process may be cumbersome for billable load versus things such as historical load.

In response, Duke explained that it plans on providing customer interval usage data to CRES providers via its CRES portal site beginning June 1, 2014.⁴⁰ Duke also explained that CRES portal would allow for a CRES provider to download the information into a flat file with no other intervention from Duke. However, this data will not all be "billing quality" data.⁴¹ In fact, billing quality interval usage data will be available for only 12% of meters.⁴² In other

³⁷ Direct Energy Exhibit 1 at 11.

³⁸ Direct Energy Exhibit 1 at 11.

³⁹ Direct Energy Exhibit 1 at 11.

⁴⁰ Duke Energy Ohio Exhibit 7 at 5-6.

⁴¹ Duke Energy Ohio Exhibit 7 at 5-6.

⁴² Tr. at 27.

words, the interval data will not have been sufficiently tested to ensure it is reliable enough to bill customers for the vast majority of meters.

A CRES provider cannot use non-billing quality data to bill customers because the CRES provider's usage number would not match the distribution usage amounts and because the amount a CRES provider bills a customer may not match what a CRES provider is settled and pays to PJM for wholesale purchases. Therefore Duke's solution to provide non-bill quality data does not allow a CRES provider to offer dynamic pricing products because the data could not reliably be used for billing. In addition, even if the information provided was bill quality, Duke also noted the data will be in hourly intervals and will be updated monthly after the accounts bill. In other words, the CRES provider would receive the information too late to meet the window to bill a customer for that month's usage.⁴³

On cross examination, it became clear that Duke indeed can provide bill quality interval data for customers when they are migrated from Duke's MDM Phase 1 into Duke MDM Phase 2. Witness Schneider explained that billing quality interval data is not available for customers in MDM Phase 1 but is available for customers whose accounts are located in Duke MDM Phase 2.⁴⁴ Witness Schneider indicated however that only large residential and commercial customers in the latter deployment are automatically placed into MDM Phase 2. Additionally, meters can be manually moved to Duke MDM Phase 2.⁴⁵ Meters moved to Duke MDM Phase 2 can be "certified" (e.g. providing billable quality interval data) within about 45-90 days from the date they are moved into Duke MDM Phase 2.⁴⁶ Witness Schneider also admitted that the 900

⁴³ Duke Energy Ohio Exhibit 7 at 5-6.

⁴⁴ Tr. at 30.

⁴⁵ Tr. at 28.

⁴⁶ Tr. at 46.

customers in Duke's current pilot which were part of the earlier meter deployment were manually placed into MDM Phase 2.⁴⁷ MDM Phase 2 has the capability to accommodate 90,000 meters currently and Duke, while it has no plans to expand Duke MDM Phase 2, indicated that it is possible. Duke will complete deployment of all meters this year with full certification of all meters by mid-2015 giving Duke nearly 1 ½ years to also expand MDM Phase 2 to accommodate all customer meters.⁴⁸

The Commission should require Duke, beginning June 1, 2014, to manually move customer accounts to Duke MDM Phase 2 for those accounts where the customer provides proper authorization for a CRES provider to access interval energy usage data up to the 90,000 limit. The Commission should also make clear that Duke should not reserve MDM Phase 2 capability for customers who are not using the full MDM Phase 2 capability at the expense of customers who are actively seeking this functionality through CRES products. Finally, the Commission should also require Duke to make available to a CRES provider within three (3) days of receiving a CRES provider's EDI enrollment information an indication if a customer's meter is providing billing quality interval data. This would enable CRES providers to pull the flat file and retrieve billable quality interval customer usage data as soon as possible or to inform a customer of a delay in service due to a meter certification delay. Otherwise, Duke should be required to inform a CRES provider of a meter's certification on the next business day after the certification occurs.

These modifications to the Stipulation would ensure that customers who want a product enabled by such data can actually enroll on and be served on that product by the CRES provider. Customers will benefit and it is in the public interest for Duke to provide CRES providers the

⁴⁷ Tr. at 40.

⁴⁸ Tr. at 25.

necessary functionality for a CRES provider to actually deliver the products selected by a customer and that is enabled by the AMI meter paid for by the customer. These changes would ensure the Stipulation is reasonable, benefits ratepayers, and is in the public interest.

Further, these modifications to the Stipulation would align the Stipulation with Ohio's state energy policy in Section 4928.02, Revised Code. Specifically, the Stipulation's failure to make a way for CRES providers to receive billing quality customer interval energy usage data fails, among other things, to provide customers with the opportunity to enroll on products they elect to meet their respective needs⁴⁹ and ensure diversity of supplies and suppliers by giving customers effective choices over their generation supply.⁵⁰ If a CRES provider does not have billable quality data then it cannot bill for its products. Further, this lack of billing quality interval usage data discourages innovation and market access for cost effective retail electric service, including time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure.⁵¹ Finally, such an amendment would recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment in order to permit CRES providers to enter Duke's market and allow customers to choose products that actually utilize their AMI meter.⁵²

⁴⁹ Section 4928.02(B), Revised Code.

⁵⁰ Section 4928.02(C), Revised Code.

⁵¹ Section 4928.02(D), Revised Code.

⁵² Section 4928.02(G), Revised Code.

E. The Commission should ensure that Duke does not fill up Duke MDM Phase 2 to the exclusion of customers signing up for CRES provider products that utilize billable quality interval usage data.

As noted above, Duke Witness Schneider, Jr., explained that billable quality customer interval energy usage data is available only for accounts that are migrated to its second generation meter data management (“MDM”) system (hereinafter “Duke MDM Phase 2”)⁵³ and that Duke has the ability to migrate accounts individually to Duke MDM Phase 2.⁵⁴ For example, Duke manually migrated residential customers in its pilot program to Duke MDM Phase 2.⁵⁵ However, Witness Schneider, Jr. explained that Duke MDM Phase 2 is limited in that it can only accommodate 90,000 meters (or about 12% of meters).⁵⁶ And, Duke is currently putting all newly installed meters (since the fall of 2013) automatically into the Duke MDM Phase 2. The meters automatically placed into Duke MDM Phase 2 are for larger residential and commercial customers.⁵⁷ While the meters for larger residential and commercial customers are a different technology, there is no distinguishing factor for those meters that are automatically placed into Duke MDM Phase 2 that requires them to be put into Duke MDM Phase 2.⁵⁸ All of these meters in Duke MDM Phase 2 will be “certified” (e.g. will provide billing quality data) approximately one year from full deployment of AMI meters (which will conclude in the middle of 2014).⁵⁹ However, once Duke completes its AMI meter deployment, Duke MDM Phase 2 will be at maximum capacity and no other customers can be added.⁶⁰

⁵³ Duke Energy Ohio Exhibit 7 at 6-7.

⁵⁴ Tr. at 28, 34, 47.

⁵⁵ Tr. at 37, 40.

⁵⁶ Tr. at 42-44.

⁵⁷ Tr. at 44-46.

⁵⁸ Tr. at 47.

⁵⁹ Tr. at 25.

⁶⁰ Tr. at 41-43.

The Commission should amend the Stipulation to require Duke to reserve the 90,000 spots in Duke MDM Phase 2 for those customers who enroll on advanced products that require billing quality customer interval energy data. This would ensure there is sufficient room to place these customers in Duke MDM Phase 2. The Commission should be clear that Duke must make room for these customers on Duke MDM Phase 2, even if Duke has to move customers in Duke MDM 2 back to Duke MDM Phase 1.

Without these changes, residential customers who paid the rider but now want to utilize their new meters for new products/services will be unable to simply because Duke chose to put others (who are not using the functionality) in Duke MDM Phase 2. It is unreasonable, does not benefit customers, and not in the public interest for Duke to automatically place customers into Duke MDM Phase 2 who are not using those capabilities to the exclusion of other customers who paid for the AMI meters as well as Duke's MDM system (both of them) and want to actually use this functionality. And, it is patently *unfair to customers and CRES providers that customers who participate in Duke's pilot (which is only open to non-shopping customers) are moved to Duke MDM Phase 2 and not CRES provider customers.*

Such a result must violate Section 4928.02, Revised Code, inasmuch as it stifles the very customer benefits intended for customers from advanced metering and time-differentiated pricing. Again, the Stipulation's failure to make a way for CRES providers to receive billing quality customer interval energy usage data fails, among other things, to provide customers with the opportunity to enroll on products they elect to meet their respective needs⁶¹ and ensure diversity of supplies and suppliers by giving customers effective choices over their generation

⁶¹ Section 4928.02(B), Revised Code.

supply.⁶² If a CRES provider does not have billable quality data then it cannot bill for its products. Further, this lack of billing quality interval usage data discourages innovation and market access for cost effective retail electric service, including time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure.⁶³ Finally, such an amendment would recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment in order to permit CRES providers to enter Duke's market and allow customers to choose products that actually utilize their AMI meter.⁶⁴

F. The Commission should amend the Stipulation to require Duke to bring a comprehensive plan to implement and fund the migration of all customers to Duke MDM Phase 2.

Further, the Commission should order Duke to bring to the Commission a comprehensive proposal within 60 days of the Commission's Order in this case to implement and fund an upgrade of Duke MDM Phase 2 to permit the migration of all customers to Duke MDM Phase 2. Duke Witness Schneider, Jr. indicated that an MDM system migration from Phase 1 to Phase 2 would provide billing quality interval customer usage data functionality for all AMI meters.⁶⁵ And, Duke is already in the very early stages of developing such a project.⁶⁶ He also noted that additional projects may then be required to provide hourly-interval customer usage data via EDI and the CRES portal for these migrated AMI meters.⁶⁷ The Commission should order Duke to provide a proposal for both the system migration as well as the "additional projects" cited by

⁶² Section 4928.02(C), Revised Code.

⁶³ Section 4928.02(D), Revised Code.

⁶⁴ Section 4928.02(G), Revised Code.

⁶⁵ Duke Energy Ohio Exhibit 7 at 7.

⁶⁶ Tr. at 28.

⁶⁷ Duke Energy Ohio Exhibit 7 at 7.

Duke Witness Schneider, Jr. The Commission should require that the migration of the remaining customers beyond the initial 90,000 to MDM Phase 2 be complete by July 1, 2015.

Amending the Stipulation to require Duke to bring a plan to migrate all customers to Duke MDM Phase 2 by June 1, 2015 would benefit customers and would be in the public interest. Approval and implementation of this plan would provide all Duke customers the opportunity to fully use their AMI meter. Approval of a plan that includes cost recovery for Duke would ensure Duke is promptly paid for the system upgrade.

Requiring Duke to migrate all customers to Duke MDM Phase 2 by June 1, 2015 would further Ohio state policy in Section 4928.02, Revised Code. The Stipulation's failure to migrate all customers to Duke MDM Phase 2 by June 1, 2015 fails, among other things, to: provide customers with the opportunity to enroll on products they elect to meet their respective needs;⁶⁸ ensure diversity of supplies and suppliers by giving customers effective choices over their generation supply;⁶⁹ encourage innovation and market access for cost effective retail electric service, including time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure;⁷⁰ and recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.⁷¹

⁶⁸ Section 4928.02(B), Revised Code.

⁶⁹ Section 4928.02(C), Revised Code.

⁷⁰ Section 4928.02(D), Revised Code.

⁷¹ Section 4928.02(G), Revised Code.

G. The Commission should amend the Stipulation to require Duke to provide billing quality customer interval energy usage data to CRES providers through an electronic data interchange (“EDI”) transaction.

While Direct Energy appreciates Duke’s efforts to bring interval meter data to CRES providers through its CRES provider portal, a preferable system of file transfer is through EDI. EDI transactions allow Duke’s computer systems and CRES providers’ computer systems to exchange data understood by each system without the need for manual intervention by Duke or CRES providers. EDI removes the extra step and any potential delays/mistakes in receiving the data in time to meet billing windows.⁷² A CRES provider can work with flat files in the interim, but the best long term solution is EDI. While Duke is not currently able to provide this customer information via EDI, Duke has at least started to develop a plan to implement EDI if funding is approved.⁷³

The Commission should amend the Stipulation to require Duke to design and implement an EDI system to communicate billing quality customer interval usage data via EDI.⁷⁴ Duke is considering EDI enhancements but a project to implement EDI enhancements has not been internally approved and cost recovery has not been secured.⁷⁵ The Commission should authorize Duke cost recovery up to \$1,368,000 in Rider DR-IM to pay for the upgrade, contingent on Duke actually undertaking the project and completing the work.⁷⁶ The Commission should allow any costs over the \$1,368,000 to be deferred for future collection through an electric distribution rate case.⁷⁷

⁷² Direct Energy Exhibit 1 at 11.

⁷³ Direct Energy Exhibit 1 at 11, Attachment 4.

⁷⁴ Direct Energy Exhibit 1 at 12; Tr. at 66-67, 70, 84.

⁷⁵ Duke Energy Ohio Exhibit 7 at 6; Tr. at 34-36

⁷⁶ Direct Energy Exhibit 1 at 12.

⁷⁷ Duke will be filing an electric distribution rate case within one year after full deployment of its SmartGrid. *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid*

An amendment to the Stipulation, as requested by Direct Energy, benefits customers and is in the public interest inasmuch as using EDI would make it easier for CRES providers to receive billing quality customer interval usage data, thereby increasing the interest in suppliers to enter the market and provide competing products to customers that utilize the granular data made possible by their AMI meters. It is unreasonable to fail to unlock the full potential of the AMI meters through the development of standard EDI transactions.

Enhancing the market to entice more CRES providers to enter and provide products (and maybe services) dependent on using AMI meters furthers Ohio's state policy in Section 4928.02, Revised Code. The Stipulation's failure to require Duke to provide billing quality customer interval energy usage data to CRES providers through an EDI transaction fails, among other things, to provide customers with the opportunity to enroll on products they elect to meet their respective needs⁷⁸ and ensure diversity of supplies and suppliers by giving customers effective choices over their generation supply.⁷⁹ Implementing an EDI system would entice more suppliers to bring products enabled by their AMI meters inasmuch as EDI is an easier and widely accepted mechanism to receive and transmit interval data. An EDI upgrade would also further encourage innovation and market access for cost effective retail electric service, including time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure.⁸⁰ The EDI upgrade would also recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible

Costs and Mid-Deployment Review, Case No. 10-2326-GE-RDR, Opinion and Order at 15 (June 13, 2012). Duke will complete meter installation in the middle of this year.

⁷⁸ Section 4928.02(B), Revised Code.

⁷⁹ Section 4928.02(C), Revised Code.

⁸⁰ Section 4928.02(D), Revised Code.

regulatory treatment⁸¹ by acknowledging the evolving marketplace, including one that makes efficient use of AMI meters, will require system changes to keep pace with the developing market.

H. The Commission should require Duke to provide billing quality customer interval usage data to CRES providers before an account bills and more frequently than once per month for customers enrolled on a CRES provider product.

Duke Witness Schneider, Jr. indicated in his Supplemental Direct Testimony that, beginning June 1, 2014, Duke will provide interval customer usage data in hourly intervals, updated monthly, after each account bills.⁸² Witness Schneider, Jr. also noted this information should be available to CRES providers the next day after the account bills.⁸³ However, Duke receives scalar readings at midnight each day that provides interval energy usage data in fifteen (15) minute increments for the previous day.⁸⁴

The Commission should require Duke to provide billing quality customer interval energy usage data (through Duke MDM Phase 2) to CRES providers before the account bills. A CRES provider, by definition, cannot price and provide a product based on customer interval energy usage data if the CRES provider cannot get access to that data before the account bills. Therefore, without this change, there is no way that a CRES provider could actually deliver on its contracts with a customer for a time of use or dynamically priced product dependent on the interval data from the customer's AMI meter.

Additionally, the Commission should amend the Stipulation to require Duke to provide billing quality interval customer usage data more frequently than monthly. Duke is already

⁸¹ Section 4928.02(G), Revised Code.

⁸² Duke Energy Ohio Exhibit 7 at 5; Tr. at 33.

⁸³ Tr. at 32-33.

⁸⁴ Tr. at 30.

collecting fifteen minute interval data and one scalar reading per day at midnight.⁸⁵ Direct Energy's experience is that it is essential to communicate with customers enrolled in a time of use or dynamically-priced product much more frequently than on a monthly basis at the time of billing.⁸⁶ One reason that customers enroll in a product like "Free Power Day," is to be more engaged in their daily energy usage.⁸⁷ At a minimum, Direct Energy (and other CRES providers) need access to their customers' interval usage data on a daily basis in order to empower customers to affect their energy usage.⁸⁸ Therefore, the Commission should require Duke to provide, for customers enrolled on a product offered by a CRES provider utilizing interval customer data, access to the daily scalar readings through the CRES provider portal website. Direct Energy is not asking for this information for all customers; only those customers enrolled on a time of use or dynamic pricing product with a CRES provider. Nor does Direct Energy need billing quality data on a daily basis. This narrower focus would appropriately limit the number of customers and quality of data that Duke would provide.

Amending the Stipulation to require Duke to provide billing quality interval usage data before the customer bills would make the Stipulation package benefit customers and be in the public interest by ensuring that CRES providers can actually bill the products and services offered to customers that utilize this data. It is unreasonable for the Stipulation to lack this critical element. Further, customers and the public would benefit from customer engagement on a frequent basis to impact customer energy usage patterns. That is one of the primary benefits

⁸⁵ Direct Energy Exhibit 1 at TLR Attachment 1.

⁸⁶ Direct Energy Exhibit 2 at 7.

⁸⁷ Direct Energy Exhibit 2 at 7.

⁸⁸ Direct Energy Exhibit 2 at 7.

provided by AMI meters. Customer energy usage changes to conserve provide benefits to the entire electric grid, all customers of all sizes.

These customer benefit changes are directly applicable to the goals of Ohio's state energy policy in Section 4928.02, Revised Code. The Stipulation's failure to require Duke to provide billing quality customer interval usage data to CRES providers before an account bills and more frequently than once per month for customers enrolled on a CRES provider product fails, among other things, to provide customers with the opportunity to enroll on products they elect to meet their respective needs⁸⁹ and ensure diversity of supplies and suppliers by giving customers effective choices over their generation supply.⁹⁰ Obviously, if a CRES provider cannot appropriately bill its products then it cannot sell them. Further, as explained by Witnesses Ringenbach and Lause, receiving data more frequently than once per month is essential for customers to actually impact their usage and make full use of the products they have enrolled on. The changes to the Stipulation would also provide the necessary data and frequency to encourage innovation and market access for cost effective retail electric service, including time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure.⁹¹ Finally, these proposed changes would recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment,⁹² especially for these type of product offerings that depend on utilization of interval usage data.

⁸⁹ Section 4928.02(B), Revised Code.

⁹⁰ Section 4928.02(C), Revised Code.

⁹¹ Section 4928.02(D), Revised Code.

⁹² Section 4928.02(G), Revised Code.

I. The Commission should amend the Stipulation to permit CRES providers to obtain customer consent to receive the customer interval energy consumption/load data through a conspicuous disclosure in the terms and conditions of service for the contract.

Direct Energy Witness Ringenbach acknowledged in her testimony the concerns that exist regarding customer authorization for a CRES provider to access the customer's interval energy usage data. Witness Ringenbach suggested additional safeguards to ensure customers know they are allowing access to granular data and to understand the purpose of that access.⁹³ Specifically, Witness Ringenbach suggested the Commission require the following language be added to CRES provider enrollment forms as well as terms and conditions:

“Customer consents to provide [CRES provider name] access to interval load data in one hour or smaller increments solely for the provision of this product. [CRES provider name] will not sell or disclose the load data for any other purpose.”⁹⁴

This language should be conspicuously disclosed for all enrollments. For paper enrollments the Commission should order a conspicuous acknowledgement on the enrollment form (like check of a box or something similar to that already required for direct solicitations) in addition to the ordinary signature on the contract.⁹⁵ For third party verifications for direct solicitations and for telephone enrollments, this would be added to the list of questions requiring affirmative consent.⁹⁶ Finally, for web enrollments, the Commission should require a customer check/click a box acknowledging disclosure to the CRES provider to continue.⁹⁷

⁹³ Direct Energy Exhibit 1 at 13.

⁹⁴ Direct Energy Exhibit 1 at 13.

⁹⁵ Direct Energy Exhibit 1 at 13.

⁹⁶ Direct Energy Exhibit 1 at 13-14.

⁹⁷ Direct Energy Exhibit 1 at 14.

The Commission should amend the Stipulation to include this requirement for CRES providers enrolling customers on a product in which the customer authorizes the CRES provider to access or receive their interval usage data. These protections, as would be added to the Stipulation package, would benefit ratepayers and the public interest by providing additional disclosures before authorizing a CRES provider access to their interval energy usage data.

Amending the Stipulation in this manner would also be in line with the important public policies contained in Section 4928.02, Revised Code. The Stipulation's failure to permit CRES providers to obtain customer consent to receive the customer interval energy consumption/load data through a conspicuous disclosure in the terms and conditions of service for the contract fails, among other things, to encourage innovation and market access for cost effective retail electric service, including time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure.⁹⁸ An amendment to the Stipulation permitting CRES providers to obtain appropriate authorization in this manner for interval usage data release would encourage innovation and market access for AMI meter-enabled products by allowing CRES providers to get into the marketplace to begin offering customers products dependent on interval energy usage data. The requested amendment would also recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment as it relates to obtaining customer consent to receive the customer's data.⁹⁹

⁹⁸ Section 4928.02(D), Revised Code.

⁹⁹ Section 4928.02(G), Revised Code.

J. The Commission should declare that Duke's tariff sufficiently protects customer interval usage data from disclosure by CRES providers and accept Direct Energy's proposal for additional customer consent until another rule is in place.

Direct Energy Witness Ringenbach also acknowledged concerns about protection and sharing of customer interval energy usage data. CRES providers are already used to receiving and protecting this type of data from customers.¹⁰⁰ The same systems used by Direct Energy in other states and protections of that data would apply equally here. Fortunately, Duke already has an approved tariff (PUCO Electric No. 20, Sheet 46.2, Section 16.2) regarding confidentiality of a customer's information. That tariff states "The Certified Supplier shall keep all information that is specific to an End-use Customer and supplied by the Company confidential unless the Certified Supplier has the End-use Customer's written authorization to do otherwise and such written authorization complies with any and all relevant requirements of the Commission."

The Commission should provide certainty to customer, CRES providers, and Duke and affirmatively acknowledge that Duke Energy Ohio's current tariff provisions provide adequate protection and confidentiality of customer interval usage data.¹⁰¹ The tariff is simple and clear – CRES providers are required to protect this customer interval usage data without exception and may not provide customer interval usage data to anyone else. The Commission, as with all approved tariffs, retains the authority and discretion to enforce the tariffs should any breaches of the tariff arise, including proper penalties on a CRES provider.

The Stipulation package does not benefit ratepayers and is not in the public interest without such a declaration. The Commission should amend the Stipulation to benefit ratepayers

¹⁰⁰ Direct Energy Exhibit 1 at 12. Witness Ringenbach explained that Direct Energy receives interval and advanced meter data for residential and small commercial customers in Texas and Pennsylvania as well as interval data for large commercial and industrial customers in all states.

¹⁰¹ Direct Energy Exhibit 1 at 13.

and the public interest so that customers unequivocally know their interval usage data is protected and CRES providers are aware of their obligations under Duke's tariff.

This amendment would also ensure the Stipulation does not violate, but rather furthers, Ohio's state energy policy in Section 4928.02, Revised Code. Amending the Stipulation in this manner would also be in line with the important public policies contained in Section 4928.02, Revised Code. The Stipulation's failure to declare that Duke's tariff sufficiently protects customer interval usage data from disclosure by CRES providers fails, among other things, to provide customers with the opportunity to enroll on products they elect to meet their respective needs¹⁰² and ensure diversity of supplies and suppliers by giving customers effective choices over their generation supply.¹⁰³ Uncertainty related to this issue causes CRES providers to pause when making decisions to enter Duke's market to offer AMI meter-enabled products. Further, this uncertainty does not encourage innovation and market access for cost effective retail electric service, including time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure¹⁰⁴ or recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.¹⁰⁵

¹⁰² Section 4928.02(B), Revised Code.

¹⁰³ Section 4928.02(C), Revised Code.

¹⁰⁴ Section 4928.02(D), Revised Code.

¹⁰⁵ Section 4928.02(G), Revised Code.

K. The Commission should amend the Stipulation to require Duke to implement the minimum Phase 1 customer interval usage data capabilities suggested by Direct Energy for CRES providers to receive customer interval usage data.

Direct Energy Witness Lause filed Direct Testimony supporting a “Priority Phase 1” MDM system,¹⁰⁶ which would be the minimum capabilities that should be included in Duke’s MDM System. Duke indicated in its testimony that it has already implemented an MDM system.¹⁰⁷ However, these capabilities fall short of the minimum capabilities that should be included in Duke’s MDM system.

These minimum capabilities would include bill quality hourly interval data reported to CRES providers on a monthly basis via EDI and AMI meter hourly interval data reported to CRES providers on a next data basis via FTP file.¹⁰⁸ It would also include CRES provider access to 12-month historical bill quality data via a web portal and EDI.¹⁰⁹

The Commission should order Duke to implement Priority Phase 1 within nine (9) months of the Opinion and Order in this case. The minimum capabilities as outlined in Priority Phase 1 describe the level of data access that Direct Energy and other CRES providers needs to offer the most basic type of time of use (“TOU”) rates, such as “Free Power Day” a product offered by Direct Energy in Texas and Pennsylvania markets.¹¹⁰ These amendments to the Stipulation would benefit customers and be in the public interest inasmuch as it would provide Direct Energy and other CRES providers the tools needed to serve customers on products utilizing customer interval energy usage data.

¹⁰⁶ Direct Energy Exhibit 2 at 6, JLL Attachment 1.

¹⁰⁷ Duke Energy Ohio Exhibit 7 at 4-5.

¹⁰⁸ Direct Energy Exhibit 2 at 6, JLL Attachment 1.

¹⁰⁹ Direct Energy Exhibit 2 at 6, JLL Attachment 1.

¹¹⁰ Direct Energy Exhibit 2 at 7.

Direct Energy's proposed amendment to the Stipulation would bring the Stipulation into compliance with Section 4928.02, Revised Code. The Stipulation's failure to require Duke to implement the minimum Phase 1 customer interval usage data capabilities suggested by Direct Energy for CRES providers to receive customer interval usage data fails, among other things, to provide customers with the opportunity to enroll on products they elect to meet their respective needs¹¹¹ and ensure diversity of supplies and suppliers by giving customers effective choices over their generation supply.¹¹² The capabilities outlined by Witness Lause will provide the data desired by CRES providers to offer AMI meter-enabled products and therefore provide customers with products they want and give them effective choices over their generation supply. The Priority Phase 1 would also encourage innovation and market access for cost effective retail electric service, including time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure.¹¹³

L. The Commission should amend the Stipulation to require Duke to work with Stakeholders to implement Priority Phase 2 and Priority Phase 3 capabilities by June 2018.

Direct Energy Witness Lause also testified that the Commission should amend the Stipulation to direct Duke Energy Ohio to work with stakeholders to develop a timeline to implement the capabilities of Priority Phase 2 and Priority Phase 3 to be in place no later than June 2018.¹¹⁴ Modifying the Stipulation in this manner would benefit ratepayers and be in the public interest inasmuch as access to more granular interval data on a more frequent basis (such as daily or in real time) gives Direct Energy the ability to develop new products that are more

¹¹¹ Section 4928.02(B), Revised Code.

¹¹² Section 4928.02(C), Revised Code.

¹¹³ Section 4928.02(D), Revised Code.

¹¹⁴ Direct Energy Exhibit 2 at 7, JLL Attachment 1.

tailored to a customer's particular energy consumption.¹¹⁵ Further, the development of Priority Phase 2 and Phase 3 would further Ohio's state energy policy in Section 4928.02, Revised Code.

III. CONCLUSION

Direct Energy respectfully requests the Commission amend the Stipulation to:

- 1) Require Duke provide bill quality interval data to CRES providers who have proper customer authorization starting June 2014 through its CRES portal;
- 2) Require Duke to reserve the 90,000 meter capability of its MDM Phase 2 system for customers who enroll in a CRES provider AMI-meter enabled product;
- 3) Require Duke provide bill quality interval data in a timely manner to allow for CRES providers to bill;
- 4) Require Duke provide a plan and work with stakeholders to expand its MDM Phase 2 system to accommodate all customers with deployed and certified meters;
- 5) Require Duke begin work to allow for EDI transfer of bill quality interval data and allow \$1,368,000 in recovery from Rider DR-IM for this project.
- 6) Require Duke to permit CRES providers to obtain customer consent to receive the customer interval energy consumption/load data through a conspicuous disclosure in the terms and conditions of service for the contract.
- 7) Declare that Duke's tariff sufficiently protects customer interval usage data from disclosure by CRES providers and accept Direct Energy's proposal for additional customer consent until another rule is in place.

¹¹⁵ Direct Energy Exhibit 2 at 7.

- 8) Require Duke to implement the minimum Phase 1 customer interval usage data capabilities suggested by Direct Energy for CRES providers to receive customer interval usage data.
- 9) Require Duke to work with Stakeholders to implement Priority Phase 2 and Priority Phase 3 capabilities by June 2018.

Direct Energy believes these changes are necessary in order to bring the Stipulation into line with the Commission's criteria for approval of settlements.

Respectfully Submitted,

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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 14th day of February, 2014 by electronic mail delivery upon the persons listed below.

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