

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of                    )  
Duke Energy Ohio, Inc., to Adjust                ) Case No. 13-1141-GE-RDR  
Rider DR-IM and Rider AU for 2012            )  
Grid Modernization Costs.                    )

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**POST-HEARING REPLY BRIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC") files its Reply Brief in this proceeding to determine how much Duke Energy Ohio, Inc. will collect from customers for costs Duke incurred during 2012 regarding its grid modernization (also known as "SmartGrid") program.<sup>1</sup> Duke collects its grid modernization costs from customers through two riders – Rider DR-IM for electric costs and Rider AU for gas costs.

OCC's Initial Post-Hearing Brief demonstrated that the Stipulation and Recommendation ("Stipulation") in this case, filed on January 10, 2014, meets the three criteria for approval by the Public Utilities Commission of Ohio ("PUCO"). First, The Stipulation is a product of serious bargaining that took place over several months among capable, knowledgeable parties who also represent diverse interests.<sup>2</sup>

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<sup>1</sup> Reply briefs in this proceeding were due February 28, 2014. Tr. at 101. But the PUCO's offices were closed on February 28, 2014 due to a power outage. Per Ohio Adm. Code 4901-1-7(D), "[i]f the commission office is closed to the public for the entire day that constitutes the last day for doing an act or closes before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday." The PUCO extended the deadline for filings due on February 28, 2014 until March 3, 2014. See *In the Matter of the Extension of Filing Dates for Pleadings and Other Papers Due to a Building Emergency*, Case No. 14-38-AU-UNC, Entry (March 3, 2014).

<sup>2</sup> OCC Initial Brief (February 14, 2014) at 6.

Second, the Stipulation, as a package, benefits customers and the public interest.<sup>3</sup> The Stipulation reduces the amount Duke will collect from electric customers by more than \$700,000, and reduces the amount Duke will collect from gas customers by more than \$400,000.<sup>4</sup> The Stipulation also establishes a cap of \$6.75 on the monthly rates to be collected through Rider DR-IM beginning with the filing made in calendar year 2014, and a cap of \$7.00 per month on rates to be collected through Rider DR-IM beginning with the filing made in calendar year 2015.<sup>5</sup> These caps would not exist were it not for the Stipulation.<sup>6</sup> The Stipulation also contains improvements that lead to better reliability standards and places a moratorium on the disconnection of residential customers who refuse, or opt out from, having a smart meter installed.<sup>7</sup>

Third, the Stipulation does not violate any important regulatory principle or practice.<sup>8</sup> Thus, the PUCO should approve the Stipulation.

In this Reply Brief, OCC counters the main arguments raised by Direct Energy<sup>9</sup> in its brief. The crux of Direct Energy's position is twofold<sup>10</sup>: (1) the Stipulation does not benefit customers because it does not allow Direct Energy to offer all the services it would like to offer Duke's residential customers<sup>11</sup>; and (2) the Stipulation does not

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<sup>3</sup> Id. at 6-8.

<sup>4</sup> Id. at 6-7.

<sup>5</sup> Id. at 7.

<sup>6</sup> Id.

<sup>7</sup> Id. at 8.

<sup>8</sup> Id.

<sup>9</sup> "Direct Energy" refers collectively to Direct Energy Services, LLC and Direct Energy Business, LLC.

<sup>10</sup> Direct Energy does not contend that the Stipulation was not the product of serious bargaining among capable, knowledgeable parties. Direct Energy Brief at 6.

<sup>11</sup> See id. at 10-12.

*promote* certain regulatory principles, and thus *violates* them.<sup>12</sup> As discussed herein,<sup>13</sup> Direct Energy’s assertions are misguided. The PUCO should reject Direct Energy’s arguments and approve the Stipulation without modification.

## **II. ARGUMENT**

### **A. The Stipulation, as a Package, Benefits Customers and the Public Interest.**

Direct Energy asserts that the Stipulation does not meet the PUCO’s second criterion for approving stipulations, i.e., that the stipulation must benefit customers and the public interest. The basis for Direct Energy’s claim is that the Stipulation does not include nine items identified by Direct Energy.<sup>14</sup> The nine items primarily involve expansion of the capabilities of smart meters and the transfer of billing-quality customer data to competitive retail electric service (“CRES”) providers.<sup>15</sup> Direct Energy claims that without the nine items, there is no benefit to customers or the public in the Stipulation because it “limits customers’ choice of advanced metered products to only that of the utility pilot.”<sup>16</sup> Direct Energy’s claim that the Stipulation does not benefit customers is wrong.

In its brief, OCC noted several benefits to customers and the public interest from the Stipulation in this case. These include reducing the amount Duke will collect from electric customers by more than \$700,000 and reducing the amount Duke will collect

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<sup>12</sup> See *id.* at 8-9.

<sup>13</sup> If OCC does not address a specific argument raised by Direct Energy, that fact should not be construed as OCC’s acquiescence to the argument.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> See *id.* at 6-7.

<sup>16</sup> *Id.* at 7.

from gas customers by more than \$400,000,<sup>17</sup> capping the monthly rates to be collected through Rider DR-IM through Duke's SmartGrid filings made in calendar years 2014 and 2015,<sup>18</sup> instituting a means for improved tracking of and reporting on reliability<sup>19</sup> and placing a moratorium on the disconnection of residential customers who refuse, or opt out from, having a smart meter installed.<sup>20</sup> These benefits in the Stipulation are tangible and meaningful.

Direct Energy ignores these benefits in asking the PUCO to modify the Stipulation. Direct Energy instead focuses on a single issue – expanding its ability to offer electric service based on time-of-use and similar rates to Duke's residential customers. Direct Energy claims its position is for customers' benefit.<sup>21</sup> But the real benefit would flow to Direct Energy.

Five of the nine Stipulation amendments advocated by Direct Energy involve the transfer of customer information from Duke to CRES providers.<sup>22</sup> Direct Energy contends that the type of customer information Duke currently provides is inadequate to ease expansion of Direct Energy's presence in Duke's service territory. As Direct Energy stated:

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,

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<sup>17</sup> OCC Initial Brief at 6-7.

<sup>18</sup> Id. at 7.

<sup>19</sup> Id.

<sup>20</sup> Id. at 8.

<sup>21</sup> See Direct Energy Brief at 17-18.

<sup>22</sup> See id. at 6-7.

these products rely on more granular interval data than the total lump sum monthly load received today by CRES providers.<sup>23</sup>

Thus, Direct Energy's proposed amendments to the Stipulation would primarily benefit Direct Energy. The only residential customers who could benefit are those customers who *ultimately* realize savings from using one of Direct Energy's services. But Direct Energy apparently would limit the availability of its services to less than 15% of Duke's residential electric customers if the PUCO adopts the proposed amendments.<sup>24</sup> Thus, only a very small minority of Duke's residential electric customers would be able to see any benefit (if a benefit even results) from Direct Energy's proposed amendments to the Stipulation.

Further, the parameters for CRES providers to offer services that are dependent on smart meters are already being addressed through generic PUCO proceedings on the subject.<sup>25</sup> Direct Energy acknowledges this and suggests that the PUCO make the order in this case subject to any future order in those dockets.<sup>26</sup> But this may cause unnecessary changes to Duke's operating system – and unnecessary costs for customers –

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<sup>23</sup> Id. at 10.

<sup>24</sup> Duke has approximately 613,000 residential electricity customers. Direct Energy states that as many as 90,000 Duke customers would have “the opportunity to take advantage of the full benefits of their AMI meters... as soon as June 2014 for many customers and soon after full deployment in the middle of this year for the remaining customers.” Id. at 7. The brief cites to the testimony of Direct Energy witness Ringenbach at 6, but her testimony does not provide specific numbers. Ms. Ringenbach's testimony, at 6, only states: “The changes I support below would provide Duke ratepayers the opportunity to take advantage of the full benefits of their smart meters, which they pay for, soon after full deployment in the middle of this year.”

<sup>25</sup> *In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-ORD; *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI. In addition, Duke has agreed that its Grid Modernization Collaborative is a venue for resolving these issues. See Duke Ex. 5 (Lawrence Testimony) at 12.

<sup>26</sup> Direct Energy Brief at 14.

if the PUCO's decisions in the generic dockets are inconsistent with the changes Direct Energy wants in this proceeding.

Once some of the changes are made to Duke's systems, it might be impossible to undo them. But the changes could be unnecessary, and any cost associated with them could also be unnecessary, even though customers would still be paying for them under Direct Energy's proposal. There should be certainty about the order in this case. The PUCO should not make the order in this case subject to future orders in the generic dockets. The PUCO should not modify the settlement as Direct Energy requests.

Any customer benefits that might be attained through Direct Energy's proposed amendments are speculative. On the other hand, as discussed above, the Stipulation already has tangible and meaningful benefits for *all* of Duke's customers. The PUCO should reject Direct Energy's proposed amendments to the Stipulation.

**B. The Stipulation Does Not Violate Any Important Regulatory Principle or Practice.**

Direct Energy claims that the Stipulation violates important regulatory principles or practices because it "limits customers' choice of advanced metered products to only that of the utility pilot."<sup>27</sup> Direct Energy's position is misguided.

In making its argument, Direct Energy specifically refers to the state policies in R.C. 4928.02(B), (D) and (J). R.C. 4928.02(B) provides that it is State policy to "[e]nsure 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." The State policy promoted in R.C. 4928.02(D) is to "[e]ncourage innovation and market access for cost-effective supply- and demand-side

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<sup>27</sup> Id. at 7.

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.” And R.C. 4928.02(J) declares that it is State policy to “[p]rovide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates.” While these are laudable goals, the fact that the Stipulation does not specifically address these issues does not mean that the Stipulation violates these regulatory principles.

There are 14 policies enumerated in R.C. 4928.02. The fact that a stipulation does not further a specific state policy does not necessarily mean that the stipulation *violates* the policy.

In addition, the three policies highlighted by Direct Energy are specific to its parochial needs. According to the evidence presented at the hearing, of the 60 or more CRES providers active in Duke’s service territory,<sup>28</sup> Direct Energy is the only one that has thus far expressed interest in providing time of use rates to Duke’s residential customers.<sup>29</sup> The PUCO should not reject a stipulation simply because it does not completely address the interests of one of the CRES providers.

The plan proposed by Direct Energy would needlessly harm customers. Direct Energy would require all of Duke’s residential customers to pay for the costs associated

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<sup>28</sup> See Tr. at 39.

<sup>29</sup> Id. at 36-37.

with implementing Direct Energy's plan, through Rider DR-IM.<sup>30</sup> The estimated cost of the project is \$1,368,000<sup>31</sup> – more than the combined reductions in the revenue requirement for Duke's residential *and* non-residential electric *and* gas customers achieved in the Stipulation. This is not in the public interest.

Further, Direct Energy's proposal violates cost causation principles. The billing and other changes that would be required to accommodate Direct Energy's proposal would be necessary only because *Direct Energy* wants to market certain services (i.e., time of use, seasonal peak, free day and pre-paid services) to residential customers.<sup>32</sup> But Direct Energy would not pay the cost for its proposal; instead, it is asking the PUCO to make all of Duke's electric customers – even those who are not on time of use rates<sup>33</sup> – pay for the changes Direct Energy seeks to require Duke to make. The cost of such changes should be borne by the CRES providers who require the changes in order to market services in Duke's service territory; customers should not pay for the changes through the rider.

In addition, any customer benefit from the pilot Direct Energy proposes as an alternative to its proposed amendments would be diminished by the pilot's limitation on competition. Direct Energy proposes a two-year pilot in which it would be the only CRES provider that could offer advanced metered services to residential customers in Duke's service territory, using the changes to Duke's systems contained in Direct

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<sup>30</sup> See *id.* at 64-65. See also Direct Energy Brief at 7.

<sup>31</sup> See Direct Energy Brief at 23.

<sup>32</sup> See Direct Energy Ex. 1 (Ringbach Testimony) at 8-10.

<sup>33</sup> See Tr. at 64-65.



Energy's proposed amendments.<sup>34</sup> Thus, residential customers' choices for competitive advanced metered services would be limited to one provider (Direct Energy) for two years, even though other providers may seek to enter the market during that time. The PUCO should not allow such a restriction on competition.

### III. CONCLUSION

Direct Energy's arguments against the Stipulation are misguided. The issues raised by Direct Energy are appropriately being addressed by the PUCO in other dockets, and the PUCO should not include them here. The Stipulation meets all three criteria for PUCO approval of stipulations. The PUCO should adopt the Stipulation without amendments.

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<sup>34</sup> See Direct Energy Ex. 1 (Ringenbach Testimony) at 7-8. Direct Energy's brief is confusing because of the placement of language in a sentence similar to one in Ms. Ringenbach's testimony. The brief states: "[T]he 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**, [sic] direct Duke Energy Ohio to promptly implement necessary information technology upgrades to effectuate the proposed pilot." Direct Energy Brief at 9 (emphasis added). This passage in the brief seems to back away from the requirement that no other CRES provider would be allowed to participate in the pilot. The brief, however, cites to pages 7 and 8 of Ms. Ringenbach's testimony, which does not mention that other CRES providers would be involved in the pilot.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Post-Hearing Reply Brief was served on the persons stated below via electronic service this 3<sup>rd</sup> day of March 2014.

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