

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for Authority to Establish )  
a Standard Service Offer Pursuant to R.C. ) Case No. 14-841-EL-SSO  
4928.143, in the Form of an Electric )  
Security Plan. )

In the Matter of the Application of Duke )  
Energy Ohio for Authority to Amend its ) Case No. 14-842-EL-ATA  
Certified Supplier Tariff, P.U.C.O. No 20. )

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

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## I. INTRODUCTION

Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”) files its Initial Brief in this proceeding. As explained below, the Commission should:

1. Reject Duke Energy Ohio’s attempts to mandate use of its POR program and its attempts to restrict bill access for non-commodity charges for CRES providers. Instead, for good policy reasons and to ensure equal footing with Duke Energy Ohio and its affiliate, the Commission should ensure customers and CRES providers can make full use of Duke Energy Ohio’s bill.
2. Reject Rider PSR and the potential for any future power purchase agreements outside of OVEC as Rider PSR forces all customers onto a monthly variable rate with full market risks.
3. In the alternative the Commission should require Duke Energy Ohio to use its share of the OVEC output to serve PIPP customers.
4. Duke Energy Ohio’s proposal for unilateral authority to terminate the ESP early should be denied.

Additionally, Direct Energy notes it agrees with and supports the brief filed by the Retail Energy Supply Association (“RESA”).

## II. ARGUMENT

- A. The Commission should reject Duke Energy Ohio’s attempts to mandate use of its POR program and its attempts to restrict bill access for non-commodity charges for CRES providers. Instead, for good policy reasons and to ensure equal footing with Duke Energy Ohio and its affiliate, the Commission should ensure customers and CRES providers can make full use of Duke Energy Ohio’s bill.**

As explained below, Duke Energy Ohio requests changes to its current billing and purchase of receivables (“POR”) programs that should be rejected by the Commission. Instead,

the Commission should require Duke Energy Ohio to permit competitive retail electric supply (“CRES”) providers to use bill-ready utility consolidated billing (“UCB”) without mandatory POR, just as CRES providers do today.<sup>1</sup> The Commission should also direct Duke Energy Ohio to allow CRES providers to put non-commodity products and services on their utility bills.<sup>2</sup>

Should the Commission grant Duke Energy Ohio’s request to amend its tariff, rather than using the undefined term “commodity only” proposed by Duke Energy Ohio, the restriction should be “competitive retail electric service” as defined in statute or electric generation service as used in rule 4901:1-10-33, Ohio Administrative Code.<sup>3</sup> Further, should the Commission approve Duke Energy Ohio’s request to limit POR to “commodity-only” service, it should direct Duke Energy Ohio to reprogram its billing system (to the extent the billing system is not already able) to accommodate a CRES provider participating in the POR program for commodity-related charges and to exclude non-commodity charges placed on the bill from the POR program.<sup>4</sup> It appears Duke Energy Ohio already has the ability to bill for and collect non-commodity charges and exclude those charges from its POR program.<sup>5</sup> This option would allow a CRES provider to continue to expand service offerings to customers but not expand Duke Energy Ohio’s POR beyond generation service.<sup>6</sup>

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<sup>1</sup> RESA Exhibit 1 at 12.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> IGS Exhibit 10 at 9.

<sup>6</sup> RESA Exhibit 1 at 12.

## 1. Current Billing Options and POR Options

Currently Duke offers UCB as an option to all CRES providers, using either a rate-ready or bill-ready format. Duke Energy Ohio's rate-ready billing system provides a single line item for CRES provider electric commodity charges.<sup>7</sup> The more sophisticated bill-ready billing option is capable of providing separate component CRES billing lines.<sup>8</sup> Under a bill-ready format, Duke Energy Ohio sends the CRES provider the monthly meter reading for each individual customer. The CRES provider then calculates the amount owed by each individual customer and sends the amount for each individual customer to Duke Energy Ohio to place on the respective customers' bills for that month's charges from the CRES provider.

Bill-ready billing, under the existing tariff, is not restricted to electric "commodity" charges but rather to "Certified Supplier charges."<sup>9</sup> Thus, under bill-ready, a CRES provider could list electric commodity charges separate and apart from non-commodity charges.<sup>10</sup> Examples of these charges are conservation equipment, demand response credits, or flat monthly amounts not strictly tied to the amount of electricity a customer consumes (also known as flat bill).<sup>11</sup> In fact, the Duke Energy Ohio IT system can actually put up to 10 separate charges on its bill for a CRES provider with 10 descriptor lines on the customer's invoice.<sup>12</sup> However, while the tariff indicates these options exist, Duke Energy Ohio witness Jones stated on cross examination that Duke Energy Ohio does not currently permit CRES providers to put non-commodity products and services on its bills for collection with commodity charges.<sup>13</sup>

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<sup>7</sup> RESA Exhibit 1 at 5; *see also* Tr. Vol. IV at 1038-1040 for general description of rate-ready and bill-ready by Duke Energy Ohio witness Daniel Jones.

<sup>8</sup> RESA Exhibit 1 at 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; Tr. Vol. IV at 1039-1040.

<sup>13</sup> Tr. Vol. IV at 1046-1047.

Duke Energy Ohio also provides a purchase of receivables (“POR”) program in which a CRES provider can elect to participate.<sup>14</sup> If a CRES provider uses UCB, it may elect to participate in Duke Energy Ohio’s POR program; however, it is not required to use POR with UCB.<sup>15</sup>

## **2. Duke Energy Ohio’s Proposal**

Duke Energy Ohio proposes to require all CRES providers who use UCB to also participate in their purchase of receivables POR program.<sup>16</sup> In conjunction, Duke Energy Ohio also proposes an amendment to its supplier tariff to add a provision limiting POR and bill-ready billing to “commodity- only” charges.<sup>17</sup> A CRES provider that puts charges on the Duke Energy Ohio bill that does not fit the vague definition of “commodity-only” would be considered in default of its obligations under the Accounts Receivable Purchase Agreement (“PAR Agreement”) with Duke Energy Ohio.<sup>18</sup>

In other words, to string all of this together, if a CRES provider wants to use UCB it must use POR. However, under POR a CRES provider can put “commodity-only” charges on the bill. Therefore, since “commodity-only” charges are the only charges allowed on the bill and the CRES provider must use POR, then a CRES provider is limited to only selling the electric commodity and putting it on the Duke Energy Ohio bill. Mechanically it shuts out entirely non-commodity products and services for a shopping customer receiving a single bill from Duke Energy Ohio.

Duke Energy Ohio attempts to substantiate its desire to require use of POR by relying on a cursory reference to conformity with other utilities offering bill-ready billing and a suggestion

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<sup>14</sup> RESA Exhibit 1 at 5.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.*

<sup>18</sup> Duke Energy Ohio Exhibit 13 at 8 and Attachment DLJ-1 page 18 of 25. *See also* Tr. Vol. IV at 1081.

from the workshops in the Commission’s investigation into the electric retail market (Case No. 12-3151-EL-COI) that operations could be improved if POR was mandatory.<sup>19</sup> Duke Energy Ohio also notes that only two (2) CRES providers out of 55 in its territory do not participate in POR and it can allegedly avoid additional administrative costs by requiring POR.<sup>20</sup> Duke Energy Ohio provides no additional support for mandatory POR besides these bald assertions.

As to limiting bill-ready bills to “commodity only” charges, Duke Energy Ohio simply points to its desire to not include non-commodity charges in POR.<sup>21</sup> However, Duke Energy Ohio does not provide a clear definition of “commodity only.”<sup>22</sup> Duke Energy Ohio Witness Jones simply provides a list of a few items that are not commodity and includes a broad “any other charge that would be considered a non-commodity charge” catch-all as the definition.<sup>23</sup> A rational stakeholder could assume that by “commodity only” Duke Energy Ohio is seeking to limit CRES service to just competitive retail electric generation service, a term that is defined by statute and rule. However, this lack of clarity leaves the tariff open to future unilateral interpretation if no clarification is made.

Finally, Duke Energy Ohio explains that a tariff change to declare the inclusion of non-commodity charges on a bill-ready bill constitutes a default is necessary to prevent the “misuse” of bill-ready billing.<sup>24</sup> Duke Energy Ohio simply states that it believes putting non-commodity charges in POR (which Direct Energy also does not support)<sup>25</sup> are not appropriate and therefore should be considered an event of default.<sup>26</sup> However, Duke Energy Ohio does not provide any

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<sup>19</sup> Duke Energy Ohio Exhibit 13 at 6-7.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> RESA Exhibit 1 at 8.

<sup>26</sup> Duke Energy Ohio Exhibit 13 at 8.

examples of when a CRES provider participating in POR has ever used UCB for non-commodity charges.

**3. The Commission should reject Duke Energy Ohio's proposed changes and explicitly permit CRES providers to utilize UCB for non-commodity products and services.**

The deficiencies described above related to the lack of clarity as well as the paucity of credible reasons regarding the details of Duke Energy Ohio's proposal are enough to reject the changes proposed. However, the Commission should reject Duke Energy Ohio's proposal (and adopt RESA/Direct Energy's alternative proposal) for four solid policy (4) reasons: (1) customers should be afforded the convenience of their utility bill to pay for bundled commodity and non-commodity products and services; (2) the Commission should be encouraging the use of innovative products and services by customers; (3) additional products and services may play a part in Ohio's compliance with proposed new carbon dioxide ("CO<sub>2</sub>") regulations; and (4) CRES providers should have equal access to the utility bill as Duke Energy Ohio's own affiliate for non-commodity products and services.

First, customers of CRES providers who would like to bundle non-commodity-related services should be able to shop for those services and have them billed on the consolidated utility service bill.<sup>27</sup> By requiring CRES providers who use UCB to also use POR, and then limit POR to the undefined "commodity only", Duke Energy Ohio is ultimately banning CRES providers from using the consolidated bill for additional products with which Duke Energy Ohio or its affiliates already uses to compete.<sup>28</sup> Direct Energy does not object to a limit on POR being used for just CRES service as the tariff and PAR agreement provide for today.<sup>29</sup> The concern is limiting the offering and UCB billing for non-commodity services. However, just as customers

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<sup>27</sup> RESA Exhibit 1 at 8.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*



want one bill for commodity service, the same applies for other products and services. Non-commodity products and services would be the last items paid after the current payment priority adopted by the Commission in its rules. Duke Energy Ohio already has the ability to bill for and collect non-commodity charges and exclude those charges from its POR program.<sup>30</sup> The Commission should require Duke to make this customer-friendly option available to customers of CRES providers too.

Second, the Commission should be encouraging CRES providers to be innovative in the marketplace with new products and services related to customer energy use.<sup>31</sup> This is most especially true in Duke Energy Ohio, which is the only Ohio utility with full smart meter roll-out.<sup>32</sup> Adopting Witness Jones' proposal will handcuff CRES providers and customers who prefer UCB as it relates to full utilization of the capabilities of customers' new smart meters paid for by customers. Some CRES providers offer smart thermostats or other devices that can help customers manage their energy usage either behind the meter or once available by tying into the smart meter data.<sup>33</sup> These behavioral changes may help the customer save money, reduce peak usage, or otherwise manage their energy usage more wisely.<sup>34</sup> Taking away the ease of the utility bill hampers putting these useful and innovative tools into customers' hands. There is no compelling reason for the Commission to authorize Duke Energy Ohio to put up this road block for customers to utilize their smart meters to their full benefit.<sup>35</sup> Adopting Duke Energy Ohio's proposal would artificially and prematurely limit innovation that customers are likely to adopt

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<sup>30</sup> IGS Exhibit 10 at 9.

<sup>31</sup> RESA Exhibit 1 at 9; IGS Exhibit 10 at 6-7.

<sup>32</sup> RESA Exhibit 1 at 9.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

without offsetting benefits that outweigh the lost opportunities if Duke Energy Ohio's proposal is adopted, especially in light of the tariff proceedings ordered in the 12-3151-EL-COI docket.<sup>36</sup>

Third, the Federal Environmental Protection Agency ("EPA") has proposed new rules to limit the amount of carbon dioxide emitted from stationary sources such as power plants.<sup>37</sup> The proposed rules provide flexibility for each state as to how they will lower the amount of CO2 emitted from stationary sources in their state and what mechanisms or programs will count towards the CO2 reduction mandates.<sup>38</sup> The other products and services CRES providers may bring to customers might be incorporated into state plans as a piece of the puzzle to meet the CO2 emission reduction mandates by helping customers reduce demand, potentially purchase carbon offsets or purchase renewable credits.<sup>39</sup>

The Commission should not artificially take this option off the table for compliance with the aggressive CO2 mandates.<sup>40</sup> Getting CRES providers into the market with any sort of material penetration for these types of products and services takes time and therefore a future change of this artificial restriction at a time when these products and services may be a part of the solution to the EPA guidelines for Ohio's CO2 reduction goals is not practical.<sup>41</sup> While we do not know what the final plan will entail, if these products are eventually incorporated into a compliance plan, re-opening a case for billing options that already exist today seems unnecessary and a waste of time and resources.<sup>42</sup> The Commission should reject Duke Energy Ohio's proposal if for no other reason than to avoid reinventing the wheel in the future.

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<sup>36</sup> RESA Exhibit 1 at 9; *see also In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Entry on Rehearing at 19 (paragraph 29) (May 21, 2014).

<sup>37</sup> RESA Exhibit 1 at 10.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

Finally, Duke Energy Ohio's proposal is plain unfair as it relates to its corporate separation plan. The Commission, over CRES provider objections (including Direct Energy), approved a modification to permit Duke Energy Ohio (the utility) to offer non-commodity products and services to customers.<sup>43</sup> The Commission noted that **all** costs must be collected from customers choosing Duke Energy Ohio for such products and services and that Duke Energy Ohio cannot provide a preference to its products and services.<sup>44</sup>

To date, Duke Energy Ohio has refused to provide any assurances that it will provide equal bill access for CRES providers wanting to put non-commodity products and services on the Duke Energy Ohio bill as well. However, Duke Energy Ohio places non-commodity products and services on its bills for itself and its own affiliates.<sup>45</sup> It is plain unfair and discriminatory to force competitors onto POR (which would result in the disallowance of similar non-commodity products and services on the same bill) when Duke Energy Ohio places charges on a bill that are excluded from POR for itself and an affiliate.<sup>46</sup>

**B. The Commission should reject Duke Energy Ohio's proposed Rider PSR, including an explicit rejection of any future purchase power agreements into the proposed Rider PSR.**

Every party in this proceeding, except for Duke Energy Ohio, opposes the non-bypassable Rider PSR as proposed by Duke Energy Ohio. Direct Energy Witness Ringenbach explained Direct Energy's opposition to proposed Rider PSR and why it should be rejected outright.<sup>47</sup> Several other witnesses, including Staff Witness Choueiki, also explained the valid reasons for rejecting Rider PSR. While the continuing OVEC obligation being directly owned by the utility

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<sup>43</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Fourth Amended Corporate Separation Plan under R.C. 4928.17 and Ohio Adm.Code 4901:1-37*, Case No. 14-689-EL-UNC, Finding and Order (June 11, 2014).

<sup>44</sup> *Id.* at 6; *see also* Entry on Rehearing at 5, 7.

<sup>45</sup> IGS Exhibit 10 at 9.

<sup>46</sup> RESA Exhibit 1 at 11-12.

<sup>47</sup> Direct Energy Exhibit 1 at 5-8.

creates a unique situation, there is no reason the utility should have the opportunity to include any new or future purchases in Rider PSR. There is no justification for Duke Energy Ohio's request and no need given default service auctions will provide generation to customers who do not choose another supplier.

As perhaps the most contentious issue in this case, the issue will be extensively briefed and Direct Energy need not repeat all the arguments of the other parties in their testimony and cross examination opposing Rider PSR. However, as a competitive retail electric supply ("CRES") provider, Direct Energy is in a unique position to shine additional light on the harm Rider PSR would wreak on customers, CRES providers, and the competitive marketplace.

Rider PSR is a reversal of the path Ohio has been on since 2001, which is to allow customers control over their electricity supply costs through choice. Rider PSR would force customers to pay for generation they do not use and does not stabilize rates; instead Rider PSR inserts unavoidable monthly market risk into customer bills. Ohio gave customers a choice of generation suppliers so the customer will be able to know and understand what they pay on their energy bills. Rider PSR most harms customers who chose a fixed price contract from a CRES provider. Those customers will have the whole concept of a fixed price undone as Rider PSR will undo the fixed generation hedges put in place. While it is true that the result of Rider PSR could be a credit in some months, it could also be a charge in others. The whole purpose of a fixed rate contract is for a customer to know exactly what they will pay every month without the risk of market changes good or bad. Variable price contracts flow through both the upside and downside of markets; if a customer wanted to take on market risk they would choose a monthly variable price.

Rider PSR forces all customers, regardless of their choice of a fixed price, onto a monthly variable rate compelling them to take on the very market risk the customer is trying to avoid through a fixed price product. No one, not even Duke Energy Ohio, can predict markets. In fact, if Duke Energy Ohio could accurately predict market prices, they likely wouldn't be stuck with OVEC today and would have taken action years ago to divest. Direct Energy understands that OVEC is a unique situation and that Duke Energy Ohio would like to recover the costs of this asset. However, forcing OVEC's market risk onto customers who have deliberately chosen to take generation elsewhere is not the answer. There is no reason customers should be forced to take generation they do not use and pushed into the full market risk of an unavoidable variable rate.

The Commission should reject Rider PSR in its entirety for the reasons put forth by Direct Energy and the other Parties in this case.

**C. In the alternative the Commission should direct Duke Energy Ohio to use its entitlement of the OVEC output to serve PIPP customers.**

As a threshold matter, Direct Energy completely opposes Rider PSR. However, if the Commission is inclined to grant a lifeline for Duke Energy Ohio's share of the OVEC generation in the form of Rider PSR, the Commission should instead use the OVEC output to serve percentage of income payment plan ("PIPP") customers.<sup>48</sup> As explained by Witness Ringenbach, the Commission could use the power from OVEC to ensure that the power paid for is actually used by the customers who pay for it and that customers who cannot shop receive the power.<sup>49</sup> Additionally, PIPP is a fairly consistent load, so concerns of over-/under-supply should be

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<sup>48</sup> Direct Energy Exhibit 1 at 9-12.

<sup>49</sup> Direct Energy Exhibit 1 at 9.

minimal.<sup>50</sup> Finally, PIPP load is not likely to leave the utility and therefore suitable for a long-term load for OVEC power.<sup>51</sup>

Witness Ringenbach also explained that Duke Energy Ohio's entitlement to OVEC output exceeds historical PIPP load and therefore a sufficient amount of power from OVEC exists to supply Duke Energy Ohio's PIPP customers. The excess generation from OVEC not used to serve PIPP customers should remain the responsibility of shareholders and sold to market. This construct would allow Duke Energy Ohio a guaranteed price for roughly a third of its OVEC supply while sharing the responsibility of the OVEC supply with shareholders.<sup>52</sup> In other words it isn't a free ride.

As explained by witness Ringenbach, the Commission could choose one of several options to price the OVEC power serving the PIPP load. The portion of the power from Duke Energy Ohio's share of the OVEC output could be priced as Duke Energy Ohio proposed in this case, using the cost of the power that Duke Energy Ohio proposes to be the benchmark for PSR, could be set at the price of the SSO auction, or could be set at a fixed price based on Duke Energy Ohio's anticipated market conditions (which would essentially be a revenue guarantee as a true power purchase agreement for PIPP load).<sup>53</sup> Whether PIPP customers would pay more than standard service offer ("SSO") customers is unknown because we do not know what the results of future SSO auctions will yield.<sup>54</sup>

The alternative mechanism proposed by Direct Energy benefits PIPP customers, CRES customers and SSO customers. If the Commission believes PSR will stabilize prices as Duke Energy Ohio alleges (which Direct Energy does not concede), then OVEC output would provide

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<sup>50</sup> Direct Energy Exhibit 1 at 9.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 9-10.

<sup>53</sup> *Id.* at 11.

<sup>54</sup> *Id.*

a stable price for PIPP customers. PIPP customers are not allowed to shop and therefore this will be as close as they are going to get to enjoying the benefits non-PIPP customers receive when they sign up with a CRES provider for a fixed rate.<sup>55</sup> Additionally, if the Commission accepts Duke Energy Ohio's assertion that PSR will be a winner for customers over the long run, then PIPP customers may pay more during certain periods, but the period of being "out of the money" on the OVEC load should be outweighed by the periods when PIPP customers would be "in the money."<sup>56</sup>

Finally, Direct Energy notes its proposed mechanism would not usurp the authority of the Ohio Developmental Services Agency ("ODSA") to aggregate PIPP load and set the price for PIPP load through that mechanism. Consistent with Commission precedent,<sup>57</sup> the Commission's decision to procure PIPP load in this manner would only apply until ODSA exercised its statutory right to aggregate PIPP customer load for generation service. Once ODSA's procurement was effective then the Rider PSR mechanism would go away and Duke Energy Ohio would be free to sell all of that power into the markets and reap the gains or losses from those sales.

While Direct Energy remains firmly opposed to Rider PSR, as an alternative the Commission should require Duke Energy Ohio to first use its share of the OVEC output to serve PIPP load and then Duke Energy Ohio can sell the remaining power in the market with shareholder skin in the game.

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 12.

<sup>57</sup> *In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 56 (July 18, 2012) and Second Entry on Rehearing at 28 (January 30, 2013). *See also In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order at 33 (August 25, 2010).

**D. Duke Energy Ohio's proposal for unilateral authority to terminate the ESP early should be denied.**

Duke Energy Ohio proposes the ESP term of June 1, 2015 through May 31, 2018, which Duke Energy Ohio describes as a two (2) year term that will automatically be extended another year unless Duke Energy Ohio exercises its right to terminate the ESP early.<sup>58</sup> Duke Energy Ohio explains it could exercise its right to terminate early “in the event there is a substantive change in either Ohio or federal law that affects SSOs or rate plans concerning same.”<sup>59</sup>

The Commission should simply make the ESP a straight three (3) year term with no ability for Duke Energy Ohio to unilaterally terminate the ESP a year early. The language proposed by Duke Energy Ohio is so vague and ambiguous that it could argue virtually any change in Ohio or federal law or any subsequent Commission decision that touches (directly or indirectly) its wide-ranging ESP could be grounds to terminate. This provision is unfair and places too much power into the hands of one party, even if it is the utility.

The uncertainty caused by this provision also harms customers and the retail competitive marketplace. Customers and CRES providers enter into agreements based on the rules of the market dictated by ESPs. Abrupt changes to the rules of the market impact CRES providers and customers alike. The ESPs do not just impact the price to beat; they impact the total market construct in which we do business. The ability of a utility to unilaterally terminate an ESP results in huge market upheaval for customers and suppliers. Duke Energy Ohio should be required to fulfill the full term of their ESP. If Duke Energy Ohio wanted a shorter term it should have simply filed for that term rather than inserting a market upheaval provision.

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<sup>58</sup> Application at 1, FN 4.

<sup>59</sup> Application at 16.



## CONCLUSION

The Commission should reject Duke Energy Ohio's proposed changes to its UCB and POR programs and order Duke Energy Ohio to bill for non-commodity products and services for CRES providers. Further, Rider PSR will force customers onto an unavoidable monthly variable rate. Customers on fixed rate pricing choose fixed rates specifically to avoid market risks which can be good or bad. Rider PSR will undo the protections of a fixed rate. The Commission should reject Rider PSR to protect customers against market risks, or in the alternative order OVEC generation be used to supply PIPP customers. And finally, the Commission should reject the proposed provision to allow Duke Energy Ohio to unilaterally terminate the ESP at the end of the second year of the term of the ESP.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties. In addition, I hereby certify that a service copy of the foregoing *Initial Brief of Direct Energy Services, LLC and Direct Energy Business, LLC* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 15<sup>th</sup> day of December 2014 via e-mail.

/s/ Joseph M. Clark  
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