**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service | ) ) ) ) ) | Case No. 14-841-EL-SSO |
| In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20 | ) ) ) | Case No. 14-842-EL-ATA |

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**OHIO DEVELOPMENT SERVICES AGENCY'S**
**REPLY BRIEF**

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**December 29, 2014**

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## *I. INTRODUCTION*

The Ohio Development Services Agency ("ODSA") filed its initial brief in this matter on December 15, 2014. In its initial brief, ODSA requested that the Public Utilities Commission of Ohio ("Commission') reject Direct Energy Services' ("Direct Energy") alternative recommendation. That recommendation would shift the risk inherent in Duke Energy Ohio's ("Duke") entitlement to Ohio Valley Electric Corporation ("OVEC") power to those least able to bear it – percentage of income payment plan ("PIPP") customers.[1]

Direct Energy's alternative recommendation has been a moving target ever since it first was introduced in the pre-filed direct testimony of Teresa L. Ringenbach on September 26, 2014. In that testimony, Ms. Ringenbach urged the Commission to reject Duke's proposal to impose the Price Stabilization Rider ("Rider PSR") on shopping and default customers because it would

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[1] *See* Tr. IX at 2613-2614 (Ringenbach Cross Examination). Direct Energy admits that the intent of its recommendation is to shift the cost of Duke's entitlement to OVEC power to PIPP customers.

increase their costs for electric service.[2] Alternatively, she proposed that the Duke OVEC entitlement be used to serve PIPP customers – offering three possible pricing methodologies – but focusing almost exclusively on applying Rider PSR to PIPP customers.[3]

However, at the hearing (and after ODSA's intervention was granted), Direct Energy witness Ringenbach retreated from applying Rider PSR to PIPP customers and stated that Direct Energy actually preferred a pricing mechanism in the form of a purchase power agreement ("PPA").[4] She proposed that the Commission approve a PPA to supply PIPP customers with OVEC power, and that the PPA would be in force for a period of 25 years, provided ODSA consented to it.[5]

However, in its initial brief, Direct Energy does not advance the PPA as its preferred recommendation, but reverts to explaining the "benefits" of the Rider PSR as applied to low-income PIPP customers.[6] Indeed, Direct Energy changes its position even more, asserting that its pricing mechanism will not be binding for 25 years (with ODSA's consent); but, may be approved for an indefinite period of time (without ODSA's consent), until ODSA exercises its statutory right to aggregate PIPP customer load. [7]

In its initial brief, ODSA addressed Direct Energy's prior positions. This reply brief addresses Direct Energy's latest position, and how it callously misses the purpose of the PIPP program.

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[2] Direct Energy Ex. 1, at 5-6 (Ringenbach Direct).

[3] Direct Energy Ex. 1, at 10-12 (Ringenbach Direct).

[4] Tr. IX at 2664 (Ringenbach Cross Examination).

[5] *Id.*

[6] Direct Energy Ex. 1 at 11 (Ringenbach Direct); Direct Energy Initial Brief at 14-15. These benefits are limited to allegedly permitting PIPP customers to take service as if under a CRES fixed-price contract. However, PIPP customers effectively have the benefit of a fixed-price contract because they pay a percentage of their income for electric supply.

[7] Direct Energy Initial Brief at 15.

## *II.* *ARGUMENT*

### *A.* ***Direct Energy's Alternative Recommendation is Unreasonable and Unlawful Because It Does Not Further ODSA's Statutory Directive to Provide Energy Services to Low Income Customers in an Affordable Manner.***

In its initial brief, Direct Energy anticipates ODSA's argument that its alternative recommendation to bind ODSA to one of its OVEC pricing methodologies for 25 years would violate R.C. 4928.54. This statute provides ODSA with the authority to aggregate PIPP load for electric supply. Direct Energy cites two prior decisions for the proposition that the Commission can order alternative PIPP pricing, without ODSA's consent, provided such pricing remains in effect only until ODSA decides to aggregate PIPP load pursuant to R.C. 4928.54.[8]

The *FirstEnergy Cases* are easily distinguished. In each, the Commission approved a price for PIPP customers that was to be in effect ***only for the three-year term of the Electric Security Pan ("ESP")*** and was ***guaranteed to be 6 percent below FirstEnergy's SSO rate***. ODSA did not contest such a beneficial proposal, which obviously furthered ODSA's statutory directive that "energy services be provided to low-income consumers in this state in an affordable manner consistent with the policy specified in section 4928.02 of the Revised Code.[9]"

Direct Energy's latest recommendation callously misses the purpose of this directive. It recommends that the Commission adopt one of its alternative pricing mechanisms "[r]egardless

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[8] See *In the Matter of 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) ("*Case No. 12-1230*"); see, also, *In the Matter of 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) ("Case No. 10-388;" collectively, the "*FirstEnergy SSO Cases*").

[9] R.C. 4928.58. To this end, ODSA's continuing objective in annual Universal Service Fund ("USF") proceedings before the Commission is to secure USF rider rates that reflect the minimum rates necessary to satisfy each EDU's USF revenue responsibility. See, e.g., *In the Matter of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 14-1002-EL-USF, Amended Application (November 26, 2014), at 10.

of the price" to PIPP customers,[10] while acknowledging that PIPP customers very well could pay more than they would under the SSO.[11] ODSA's initial brief explained that PIPP customers would be directly affected by such an increase in the cost of their electric service – potentially to the tune of $22 million during the ESP's first three years alone.[12] These increases violate not only in R.C. 4928.58, but also R.C. 4928.02(A) and (L), which, respectively, require the Commission to ensure reasonably priced retail electric service and to protect at-risk populations. The *FirstEnergy* cases do not change the fact that Direct Energy's alternative recommendation is unlawful.

Moreover, as stated in ODSA's initial brief, the alternative recommendation is unreasonable because it is not supported by any analyses or evidence whatsoever regarding its effect on PIPP customers. Absent evidence that these pricing proposals are consistent with ODSA's statutory directives contained in R.C. 4928.58 and 4928.02(A) and (L) [i.e., to ensure affordable enegy services at reasonable prices to at-risk populations], the record does not warrant their acceptance and the proposals should be denied.

## ***III. CONCLUSION***

Direct Energy's alternative proposal admittedly is designed to shift the risk of Duke's OVEC entitlement onto low income PIPP customers – the customers least able to bear the added risk. For the reasons stated in its initial and reply briefs in this proceeding, ODSA respectfully requests the Commission to reject Direct Energy's alternative proposal as unreasonable and unlawful.

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[10] Direct Energy Ex. 1 at 11 (Ringenbach Direct).

[11] *Id.*; Direct Energy Initial Brief at 14.

[12] ODSA Initial Brief at 6.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Initial Brief was served upon the following parties of record by e-mail and/or regular U.S. mail, this 29th day of December 2014.

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