

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application)	
of Duke Energy Ohio, Inc., to)	Case No. 14-2209-EL-ATA
File for Tariff Approval)	

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

I. Introduction

Pursuant to the Public Utilities Commission of Ohio (“Commission”) Entry on Rehearing issued on May 26, 2014 in the proceeding captioned, *In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI (“COI”), Duke Energy Ohio filed an Application for Tariff Approval in Case No. 12-3151 that purported to specify the “terms, conditions, and charges associated with providing interval CEUD [customer energy usage data],” and “based upon [the Company’s] capabilities and cost considerations” on November 21, 2014. Then, on December 16, 2014 Duke withdrew the Application and filed the same in this docket. Direct Energy Services and Direct Energy Business (jointly, “Direct Energy”) submit these Initial Comments in response to Duke’s Application for Tariff approval.

The Application filed by Duke includes information about its capabilities to share interval data with CRES providers for non-residential Interval Data Recorders (“IDRs”) which have traditionally been installed at large commercial and industrial facilities. Regarding access to interval CEUD for residential customers, Duke’s filing provides only, “[m]atters related to providing granular residential interval CEUD for CRES providers will require significant investment and will require additional stakeholder development in a designated working group

with Commission Staff participation. Duke Energy Ohio looks forward to participating in such working groups.” (Application at 2).

Although the language quoted from the Entry on Rehearing did not specify that the Commission was referencing residential customers’ CEUD from Advanced Metering Infrastructure (“AMI” or “smart meters”) the section of the Entry is titled “Advanced Metering Infrastructure” and the Staff Report included sections on AMI and Data Access and Time-Differentiated Rates which make clear that Staff was referencing issues regarding AMI meter interval data (as opposed to IDR meter data) exchange between utilities and CRES providers for residential customers.¹ Duke’s filing completely fails to comport with the directive of the Commission’s Entry on Rehearing and must be amended in order to provide CRES providers the access to interval CEUD for residential and small business customers with AMI meters that is necessary for CRES providers to develop time of use and other dynamically priced products.

II. Duke Has Multiple Existing, Unmet Legal Obligations to Allow CRES Providers Access to Interval Data from its Advanced Meters.

On June 20, 2011, Duke filed an Application for a Standard Service Offer in the form of an Electric Security Plan.² In approving a proposed Stipulation in that proceeding, the Commission directed the following³:

Duke will work with interested CRES providers and Staff to jointly develop a secure, web-based system that will provide electronic access to key customer usage and account data that can be accessed via a secure, supplier website that presents the following data and information in a format that can be automatically retrieved, by the CRES provider authorized by the customer...The following data and information, in a format that can be automatically retrieved, will be the subject of the web-based system: account numbers; meter numbers; names; service address, including zip codes; billing address, including zip

¹ *In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI (“COR”), Staff Report at 23-24 (January 16, 2014) and Entry on Rehearing at 18-19 (May 21, 2014).

² *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 Nos. 11-3549-EL-SSO (“ESP II”).

³ ESP II Opinion and Order at 36-37 (November 22, 2011).

codes; email address; meter reading cycle days; meter types; indicator if customer has an interval meter; rate code indicator; load profile group indicators; peak load contribution (PLC) and network service peak load (NSPL) values (capacity and transmission obligations); 24 months of consumption data (in kWh) by billing period; 24 months of demand data (in kWh); 24 months of interval data; indicator if SSO customer; and, identifier as to whether customer is participating in the budget billing plan (emphasis added). Duke shall make a commercially reasonable effort to add the other items [items other than the load profile group indicators and customer service addresses] by June 1, 2013 but agrees to complete the additional data items no later than June 1, 2014.

This Order clearly created an obligation to make 24 months of (historical) interval data available to CRES providers. This obligation has remained unmet by Duke for over three years, since November 2011.

On June 30, 2011, Duke filed its first Application to Adjust Riders DR-IM and Ruder AU for 2010 SmartGrid Costs and Mid-Deployment Review⁴. Direct Energy was a signatory party to the Stipulation filed in that proceeding and subsequently approved by the Commission in an Opinion and Order on June 13, 2012. At that time, Duke's AMI deployment was between 25 percent and 46 percent complete (variance between Q1 2011 and Q1 2012) with deployment planned for completion in 2014⁵. Among other items, the SmartGrid Rider I Stipulation provided⁶,

Duke will conduct an educational workshop for all interested parties and, specifically, interested CRES providers, wherein Duke will provide and share its insights and learning related to Duke's two years of experience offering TD [time differentiated] rates. Duke will continue to conduct workshops for CRES providers and interested parties twice a year during the course of SmartGrid deployment, so long as there is interest in doing so...

Duke will provide CRES providers the necessary system functionality to offer CRES customers TD rates consistent with its existing supplier tariff beginning January 1, 2013. Duke shall provide a quarterly update to the Collaborative on the status of implementing the necessary billing functionality.

⁴ *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust and Set Its Gas and Electric Recovery Rate for 2010 SmartGrid Costs Under Riders AU and Rider DR-IM and Mid-deployment Review of AMI/SmartGrid Program*, Case No. 10-2326-GE-RDR ("SmartGrid Rider I").

⁵ SmartGrid Rider I Stipulation at 11 (February 24, 2012).

⁶ *Id.* at 11.

Duke also committed in the SmartGrid Rider I Stipulation to file an electric distribution rate case in the first year after full deployment of AMI.⁷ Thus, Duke's obligation to provide CRES providers the necessary system functionality to offer shopping customers time of use ("TOU") rates dates back to the SmartGrid Rider I Stipulation. Duke has not yet met this obligation for residential or commercial customers with AMI meters.

On June 28, 2013, Duke filed an Application to Adjust Riders DR-IM and Rider AU for 2013 Grid Modernization Costs.⁸ In that proceeding, Direct Energy was not a signatory party to the Stipulation filed by Duke and other parties. Instead, Direct Energy recommended the Commission amend the Stipulation in several ways, all related to Duke providing AMI interval data to CRES providers such that CRES providers could develop and offer time of use ("TOU") and other dynamic pricing plans to residential customers. The changes recommended by Direct Energy would have allowed up to 90,000 residential shopping customers in Duke's territory to participate in a TOU rate as early as June 2014.⁹

In its Opinion and Order issued on April 9, 2014, the Commission approved the Stipulation and found that "Direct Energy's arguments in this proceeding relate to MDM and data sharing, issues that are not contained within the intended subject matter of Duke's SmartGrid rider application in this case" and also noted that, "the Commission already has a docket open in the Electric Market Case [Case No. 12-3151] to explore the issues of MDM data sharing with CRES providers that were discussed by Direct Energy's witnesses in their testimony."¹⁰ Although the 2013 Grid Modernization case did not create a specific obligation for

⁷ *Id.* at 7

⁸ *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2012 SmartGrid Costs*, Case No. 13-1141-GE-RDR ("Smart Grid Rider II").

⁹ SmartGrid Rider II, Direct Energy Reply Brief at 5 (March 3, 2014).

¹⁰ SmartGrid Rider II Opinion and Order at 17 (April 9, 2014).

Duke regarding data access, it did indicate the Commission's intention that these issues be dealt with in the Commission Ordered Investigation docket.

On December 12, 2012, the Commission filed an Entry initiating a Commission Ordered Investigation of Ohio's retail electric service market ("COI"). In that proceeding the Commission found that "the EDUs must provide interval CEUD [customer energy usage data] to CRES providers, in a manner consistent with the Commission's rules, Ohio Adm. Code 4101:1-10-24, and must file amended tariffs that specify the terms, conditions, and charges associated with providing interval CEUD within six months of this Entry on Rehearing."¹¹

Unfortunately, despite Duke's commitment in the SmartGrid Rider I Stipulation approved by the Commission and directives from the Commission in ESP II and the COI, CRES providers are still unable to access interval CEUD for residential customers in Duke's territory. Customers remain unable to choose time differentiated and other dynamic pricing rates from CRES providers.

III. Duke's Tariff Fails to Provide Access to Residential Customers' Interval Data.

On November 21, 2014, Duke filed an Application for Tariff Approval in Case No. 12-3151 that purported to specify the "terms, conditions, and charges associated with providing interval CEUD," and "based upon [the Company's] capabilities and cost considerations." Then, on December 16, 2014 Duke withdrew the Application and filed the same in this docket. The tariff filing clearly fails to comport with the directive of the Commission and fails to resolve the issues regarding data access that have been discussed between Duke and other parties, including Direct Energy, since 2011.

Duke's tariff notes that it has website and Electronic Data Interchange ("EDI") capabilities to "share interval data with CRES providers for approximately 4,000 traditional non-

¹¹ COI Entry on Rehearing at paragraph 29, page 19 (May 21, 2014).

residential Interval Data Recorders (IDR).”¹² IDR meters are a completely different technology than Advanced Metering Infrastructure (“AMI” or “smart meters”). IDR meters have been used exclusively for large commercial customers, not residential or small business customers. Residential and small business customers are metered using AMI – the smart meters Duke has been deploying and customers have been paying for since 2008. So, despite the fact that between 2008 and 2014, Duke Energy Ohio deployed nearly 800,000 AMI meters to residential and small commercial customers in its territory, it has not yet developed the capability to exchange such data with CRES providers for such customers.

Regarding access to interval CEUD for residential customers, Duke’s filing provides only, “[m]atters related to providing granular residential interval CEUD for CRES providers will require significant investment and will require additional stakeholder development in a designated working group with Commission Staff participation. Duke Energy Ohio looks forward to participating in such working groups.”¹³ Further, in its responses to interrogatories from both Staff and Direct Energy, Duke repeatedly suggests that data access issues should be dealt with in working groups, specifically referencing the Market Development Working Group (“MDWG”) created in the COI docket.¹⁴ The Commission should reject Duke’s suggestion that data access issues can be resolved in the MDWG.

Direct Energy has consistently participated in Duke’s Grid Modernization Collaborative meetings since October 2012. Direct Energy also provided detailed comments, testimony, and other pleadings that specify the method and manner of data access it seeks in order to bring new

¹² Duke Application at 1, emphasis in the original (December 16, 2014).

¹³ *Id.* at 2.

¹⁴ Duke specifically states, “These matters are ideally suited to resolution through the Market Development Working Group so that all electric distribution utilities may enable this data on a uniform basis to all third parties in a standardized format.” Please see attached Direct Energy Attachment 2 which includes this statement in response to DE-INT-01-001 (at 5); DE-INT-01-003 (at 3); and DE-INT-01-008 (at 2).

and innovative TOU pricing to residential shopping customers in Duke's territory.¹⁵ Notably, despite the commitment from Duke in the 2012 Stipulation to hold "workshops for CRES providers and other interested parties twice a year during the course of the SmartGrid deployment" and to "provide a quarterly update to the Collaborative on the status of implementing the necessary billing functionality" for CRES providers to offer TOU rates¹⁶, the most recent Grid Modernization Collaborative meeting or update shared with the Collaborative was on April 2, 2014. The Commission should reject Duke's supposition that additional working group meetings alone can be held to resolve these issues. Notwithstanding Direct Energy's participation in Collaborative meetings, Duke has not made AMI interval CEUD available to CRES providers. Clearly workshops alone are not sufficient to resolve these issues.

More specifically, the Commission should expressly reject the notion that these issues should be taken up and resolved by the MDWG for at least two reasons. First, the MDWG includes representatives from multiple utilities in the state, including Duke, American Electric Power ("AEP Ohio"), the FirstEnergy utilities, and Dayton Power and Light ("DP&L). Of these utilities, only Duke has fully deployed AMI. Therefore, the data access issues that are of significant interest to CRES providers within Duke's territory do not carry the same weight in other utility territories. For example, since DP&L has not yet deployed a single AMI meter to a residential customer within its territory, it would be futile to discuss how CRES providers could theoretically access data from such meters. In contrast, Duke has been deploying AMI since 2008 and its deployment is near 100%.

Second, the MDWG is already dealing with a number of other assigned issues, including but not limited to: instant connect, seamless moves, contract portability, bill format, and other

¹⁵ See generally, Direct Energy's participation in the 2013 SmartGrid Rider proceeding and the COI.

¹⁶ SmartGrid Rider I Stipulation at 11 (February 24, 2012)

issues that affect customers in each of the utility territories. Since the MDWG is already dealing with a host of other important issues, moving AMI data access (which is of most significance in the Duke territory) to the MDWG will only result in further delay resolution of the issue to the detriment of customers. The Commission should not assign this issue to the MDWG or permit Duke to continue to avoid its legal obligation to provide data access to CRES providers. It is time that Duke unlock the full benefits of the meters customers have paid for (and will continue to pay for) and follow through on the commitment that Duke has repeatedly made to enable data access to CRES providers and their customers.

The Commission should determine in this case, as it intended in the COI case, the details of the terms, conditions, and charges related to interval CEUD. Although additional SmartGrid Collaborative meetings may be helpful to parties in terms of coordination and information sharing, Duke has already failed to comport with past commitments and Commission directives on these data access issues; moving further discussion to working groups will only result in more delay and depriving customers of the full value of the meters. Further delay could also dissuade CRES providers with capability to provide TOU products from putting their resources into Ohio, to the disadvantage of Duke's customers. CRES providers like Direct Energy are excited to bring products and services to residential and small commercial customers that utilize the interval CEUD but cannot bring these types of products and services to customers until these data access issues are resolved. The details of terms, conditions, and charges related to interval CEUD from AMI meters in Duke's territory should be determined on the record in this proceeding.

IV. Duke's Tariff Should be Amended to Enable CRES Providers to Offer TOU Rates to Residential Customers.

Duke failed to incorporate terms or conditions into its proposed Application that allow CRES providers access to the pertinent CEUD from AMI. Lack of access to CEUD from AMI continues to stymie the development of the competitive market and limit the benefits of AMI accessible to residential customers in its territory.

A. Descriptions and definitions of required data access elements.

As Direct Energy previously advocated, Duke needs to consider several elements in the development or modification of its master data management system ("MDM system" or "MDMS") that will provide meaningful CRES provider access to AMI meter data, including: interval frequency, reporting frequency, data quality, and format of data exchange.

Interval frequency describes the number of times within a 24-hour period that data is captured and recorded as a "block" – hourly interval data represents the energy used within a block of 60 minutes; 15-minute interval data represents the energy used within a block of 15 minutes, etc. Duke indicated in discovery its AMI electric meters have the capability to be programmed to collect data at one hour and fifteen minute increments (but not one minute increments).¹⁷ Reporting frequency describes how often the utility provides data to CRES providers and is typically on a "next-day" or monthly basis for billing.

Data quality describes whether the data is "raw" which may include brief gaps or lapses in recording ("AMI meter data") or whether it has been validated, estimated, and edited ("VEE" or "bill quality" data). Finally, format describes how data is transferred, typically though a web portal, electronic data interchange ("EDI"), or a file transfer protocol ("FTP file" or "flat file").

¹⁷ See Response to DE-INT-01-005 (Attachment 2).

A web portal is a website accessible to CRES providers. EDI is a process of transferring data from one computer system to another by standardized message formatting, without the need for human intervention. EDI is already an accepted standard used for exchange of billing data between utilities and CRES providers in Ohio. An FTP file is a standard network protocol used to transfer computer files from one host to another over a network (such as the internet).

B. Gradual system capability progression.

Direct Energy provides a matrix¹⁸ that outlines its preferences regarding Duke’s modification of its MDM system in order to facilitate CRES provider access to interval CEUD. Direct Energy proposes that Duke should modify its MDM in three phases, with the most basic and minimum capabilities in Phase 1 and more advanced capabilities outlined in Phases 2 and 3.

Phase 1

Priority	Interval Frequency	Reporting Frequency	Data Quality	Format
Phase 1	Hourly	12 and 24-Month Historical	Bill Quality	Web portal and EDI
Phase 1	Hourly	Monthly (Billing Cycle)	Bill Quality	EDI
Phase 1	Hourly	Next-Day, Daily	AMI Meter Data	FTP File

An MDM system with the capabilities as outlined in Phase 1 of Direct Energy’s matrix is the lynchpin that will enable CRES providers to offer more dynamic and innovative products to residential customers in Duke’s territory. The Phase 1 capabilities include CRES provider access to 12 and 24 month historical billing quality data via a web portal and EDI; billing quality (“VEE”) hourly interval data reported to CRES providers on a monthly basis via EDI *before* the customer bills; and AMI meter (or “non-billing quality”) data reported to CRES providers on a next day, daily basis via an FTP file.

¹⁸ Attachment 1.

The minimum capabilities as described in Phase 1 outline the level of data access that Direct Energy (and Direct Energy believes other CRES providers) needs to offer the most basic type of TOU rates. Examples of such products currently in the market in other states include “Free Power Day” (currently available to customers in Texas, Pennsylvania, and Illinois) or any type of product that has “peak” and “off peak” hours, such as “Best Hourly Rate Plan” (currently available to PPL customers in Pennsylvania) which prices power used between 12PM at 6:59PM at a fixed premium rate and all other usage at a lower fixed rate. The Best Hourly Rate Plan is designed to incent customers to reduce usage during potential peak hours and to minimize strain on the grid. These capabilities would also allow CRES providers to develop simple demand response and peak time rebate programs for residential customers.

Although access to daily interval data is not necessarily required for billing purposes for these types of products, it is still a very important component of the Phase 1 capabilities. In Direct Energy’s experience, it is essential to communicate with customers enrolled on TOU or other dynamic product much more frequently than on a monthly basis at the time of billing (after energy has already been used!). One reason that customers may be motivated to enroll in a TOU or dynamic product is to become more engaged and have greater control over their daily energy usage and costs. Therefore, CRES providers need access to customers’ interval usage data on a daily basis in order to provide more timely and specific information to customers about their consumption.

Until Duke updates its MDM system to include these changes, it is the only entity that can offer customers products or services that utilize interval meter data. This situation specifically disadvantages shopping customers, who are unable to participate in Duke’s time of use pricing pilot, and hinders the development of a more robust competitive market. Minimum

MDMS capabilities need to be put in place as soon as practicable, so that the most basic types of TOU and dynamic rates can be made available to shopping residential customers in Duke’s territory. The Commission should direct Duke to work with Direct Energy and other stakeholders to modify its MDM systems to allow efficient data access and exchange with CRES providers.

Phases 2 and 3

More advanced MDMS capabilities, including those outlined as Phases 2 and 3 in Direct Energy’s matrix (and as provided below), should be considered during this initial phase so that the system can develop to accommodate transfer of more granular data and more advanced products in the future. Phases 2 and 3 describe interval data exchange capabilities that include 15-minute and 1-minute interval data points and the ability to access this information live or in “real-time” via a web address that would “push” data to CRES providers on demand. In contrast to a “pull” system in which CRES providers would have to make individual requests to access data, a “push” system would automatically transfer data to CRES providers based on the provider’s specifications.

Priority	Interval Frequency	Reporting Frequency	Data Quality	Format
Phase 2	15-Minute	Next-Day, Daily	AMI Meter Data	FTP File
Phase 2	15-Minute	Monthly (Billing Cycle)	Bill Quality	EDI
Phase 2	1-Minute	Next-Day, Daily	AMI Meter Data	FTP File
Phase 2	1-Minute	Monthly (Billing Cycle)	Bill Quality	EDI
Phase 3	15-Minute	Live/Real-Time	Bill Quality	URL push
Phase 3	1-Minute	Live/Real-Time	Bill Quality	URL push

V. Recommendation

A. Implementation of Interval CEUD Capabilities

Direct Energy requests that the Commission Order Duke to implement the capabilities in Phase 1 as soon as practicable, with suggested specific timeframes outlined in the table below. A pre-requisite to CRES provider access to each of these data sets is proper customer authorization. Fortunately, the Commission already adopted rules related to the manner (including a stand-alone form) and storage of proof of customer authorization.¹⁹ The Commission also explicitly ordered electric utilities (including Duke) to provide interval CEUD to CRES providers once they have met the authorization requirements in the rules.²⁰ All that is left is for the Commission to order Duke to make its computer and billing systems transmit interval CEUD to CRES providers. Direct Energy suggests the following, all of which are recommended in Direct Energy's MDM Phase 1:

Timeframe	Description of Deliverable
Within 30 days of Order in this Case	Duke shall provide 12 and 24 months of historical, billing quality, hourly interval data via its web portal for any customer with a certified AMI meter.
Within 3 months of Order in this case	Duke shall provide billable quality interval data in one-hour increments ("hourly intervals") available on a monthly basis via EDI as least three business days before the customer's monthly bill is issued for any customer with a certified AMI meter.
Within 6 months of Order in this case	Duke shall provide non-billing quality (AMI meter data) in hourly intervals via an FTP file on a next-day, daily basis for any customer of a CRES provider with a certified AMI meter. Duke shall file in this docket a proposed budget as well as comprehensive listing of benchmarks/tasks with deadlines for Phase 2 and Phase 3 capabilities (see Attachment 1)

¹⁹ *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. Second Entry on Rehearing at 10-11 (May 28, 2014).

²⁰ *Id.*

As explained above by Direct Energy, Duke owes this information multiple times over to customers and to CRES providers. The Commission should enforce the settlement in the 2011 electric security plan case and require Duke to provide 12 and 24 months of historical, billing quality, hourly interval data via its web portal for any customer with a certified AMI meter within 30 days of an Order in this case. Duke already received \$500,000 to implement this capability and has never applied for accounting authority to defer for possible future collection in a rate case any additional monies needed to implement this capability²¹

Further, the Commission should enforce the 2012 Stipulation in the 10-2326 proceeding and direct Duke to provide billable quality interval data in one-hour increments (“hourly intervals”) available on a monthly basis via EDI as least three business days before the customer’s monthly bill is issued for any customer with a certified AMI meter. The Commission should require Duke to comply with this requirement within 3 months of an Order in this case. Doing so will simply provide CRES providers the necessary system functionality to offer CRES customers time of day rates consistent with its existing supplier tariff, as promised in the 10-2326 proceeding. Assertions by Duke that cost recovery is needed before it can provide this information to CRES providers should be rejected inasmuch as Duke agreed to provide this functionality without specific cost recovery (as Duke received in ESP II). Duke received the benefit of its bargain in the 2010 SmartGrid Rider proceeding and it is time that Duke delivers to CRES providers their benefit of the bargain.

Moreover, within 6 months of an Order in this case Duke should be required to provide non-billing quality (AMI meter data) in hourly intervals via an FTP file on a next-day, daily basis for any customer of a CRES provider with a certified AMI meter. Access to next-day, daily interval CEUD allows CRES providers to communicate with customers much more frequently

²¹ ESP II Stipulation at 35 (October 24, 2011).

than on a monthly basis at the time of billing (after energy has already been used!) to encourage energy efficiency or responsiveness to other value-added energy services. One reason that customers may be motivated to enroll in a TOU or dynamic product is to become more engaged and have greater control over their daily energy usage and costs. Therefore, CRES providers need access to customers' interval usage data on a daily basis in order to provide more timely and specific information to customers about their consumption.

Duke should also be required within 6 months of an Order in this case a proposed budget as well as comprehensive listing of benchmarks/tasks with deadlines for Phase 2 and Phase 3 capabilities. Direct Energy acknowledges the extended capabilities in Phase 2 and 3 may require more effort and collaboration among Duke and the Parties. However, we cannot know what hurdles may exist until Duke undertakes a study and reports back as to timeframes and budget to accomplish MDM Phases 2 and 3. However, the Commission should also ensure that Duke's review of Phases 2 and 3 do not impede its delivery of the functionalities in Phase 1 as owed pursuant to the above-described settlements.

The Commission should rectify this situation and order Duke to provide the information in the timeframes suggested by Direct Energy. The Commission should reject Duke's request to punt these important issues to the MDWG where these important issues risk withering because they're crowded out by other issues. The Commission should take this opportunity to move the ball forward in a meaningful way for customers and CRES providers.

B. The Commission should direct Duke to submit within 6 months of an Order in this proceeding necessary information to allow Staff to determine whether Duke achieved "full deployment" of its SmartGrid.

In the ESP II Stipulation Duke committed to file an electric distribution base rate case “in the first year after full deployment of SmartGrid.”²² The 2012 Stipulation tasks Staff with determining when “full deployment” occurred, as defined in the 2012 Stipulation.²³ Specifically, the 2012 Stipulation states “Full deployment shall mean that all SmartGrid hardware and systems necessary to generate the benefits set forth in Attachment 2, Column 2015. The point in time when full deployment occurs or has been achieved shall be determined by the Staff of the Commission based upon information provided by the Company.”²⁴ The term “SmartGrid” was not defined.

Direct Energy respectfully requests the Commission direct Duke to submit within 3 months of an Order in this proceeding necessary information to allow Staff to determine whether Duke achieved “full deployment” of its SmartGrid. The Commission should then give Staff six months to file in this docket and the 10-2326 docket its findings whether Duke achieved “full deployment.”

A determination from Staff that Duke actually achieved “full deployment” would kick off the one year period in which Duke must come in for a distribution rate case. Unfortunately, the testimony submitted by Duke in the most recent SmartGrid Rider update case does not address whether Duke met the criteria in Attachment 2, Column 2015 in the 2012 Stipulation to trigger the one year distribution rate case filing clock²⁵. A rate case would be the proper vehicle to provide for cost recovery of any alleged additional costs in Phases 2 and 3 related to putting into place the necessary MDM system to fully utilize customers’ AMI meters. Additionally, from a timing perspective, the timeframes proposed by Direct Energy would permit Duke the

²² ESP II Stipulation at 7 (October 24, 2011).

²³ *Id.* at 6, FN4.

²⁴ *Id.*

²⁵ See, *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2013 SmartGrid Costs*, Case No. 14-1051-GE-RDR (“SmartGrid Rider III”).

opportunity to put additional MDM costs into a proper test year as part of the distribution rate case. Moreover, it would also provide a venue to fully review Duke's distribution revenues, including a review in light of any distribution-related riders as part of Duke's electric security plan (as effective at that time).

C. The Commission should put Duke on notice it risks material penalties if it does not comply with the Order in this case.

As a further demonstration of the significance of these issues, the Commission should also Order the following: 1) that seven months after the Commission Order in this case Duke must make a filing to reduce its current Grid Modernization recovery rider (such as the riders approved in prior Case Nos. 10-2326, 13-1141, and 14-1051) to \$0 and Duke will not be permitted to continue to recover such costs if Duke has not complied with the Commission's Order in this case (as determined by Staff); 2) explicit notice from the Commission that Duke subjects itself to penalties of up to \$10,000 per day (pursuant to R.C. 4905.54) if it does not comply (e.g. misses a deadline); and 3) that the Commission may impose any other remedy within its authority for Duke's continued failure to comply with Commission directives. While Direct Energy acknowledges these are strong potential penalties, it is evident from past proceedings and pleadings that Duke has not met existing legal obligations from Commission Orders to permit CRES provider access to AMI data. These types of possible actions are necessary to incentivize Duke to comply with the Commission's Order in this case.

VI. Conclusion.

Duke has multiple unmet legal obligations to enable CRES provider access to CEUD from AMI meters: 1) a Commission Order to provide 24 months of (historical) interval data (from ESP II); 2) a commitment to provide CRES providers the necessary system functionality for CRES providers to offer customers time differentiated rates by January 1, 2013 (from

SmartGrid Rider I and 3) a directive from the Commission to file a tariff specifying the terms conditions, and charges associated with providing interval CEUD (from the COI docket).

Duke's filing completely fails to comport with the directive of the Commission's Entry on Rehearing and must be amended in order to provide CRES providers the access to interval CEUD for residential and small business customers with AMI meters that is necessary for CRES providers to develop time of use and other dynamically priced products.

The Commission should not assign these issues to the MDWG and instead should order Duke to: 1) within 30 days of an Order in this case provide 12 and 24 months of historical, billing quality, hourly interval data via its web portal; 2) within three months of an Order in this case to provide billable quality hourly interval data available to CRES providers on a monthly basis via EDI at least three business days before the customer's monthly bill is issued; 3) within 6 months of an Order in this case provide CRES providers access to non-billing quality (AMI meter data) in hourly intervals via an FTP file on a next-day, daily basis; and 4) within 6 months of an Order in this case file a proposed budget and listing of benchmarks and tasks to enable Phase 2 and Phase 3 capabilities as described in Attachment 1 with deadlines to implement such capabilities. The Commission should also require Duke to file an amended tariff memorializing all of these changes in MDM Phase 1 once they are complete.

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 Comments of Direct Energy Services, LLC and Direct Energy Business, LLC was sent by, or on behalf of, the undersigned counsel to the follow parties of record this 6th day of March, 2015, via email, except those specifically designated as being served via U.S. Mail.

/s/ Jennifer L. Spinosi

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Summary: Comments Initial Comments of Direct Energy electronically filed by Ms. Jennifer L. Spinosi on behalf of Direct Energy Business, LLC and Direct Energy Services, LLC