

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)
Investigation of Submetering in the state of) Case No. 15-1594-AU-COI
Ohio.)

**JOINT INITIAL COMMENTS OF DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS, LLC AND INTERSTATE GAS SUPPLY, INC.**

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I. Introduction and Background

On December 16, 2015, the Commission issued a Commission Ordered Investigation (“COI”) to determine the scope of the Commission’s jurisdiction over submetering by condominium associations and similar entities in the state of Ohio. Specifically, the Commission sought feedback on the following three questions: 1) Are condominium associations and similarly situated entities, including third party agents of those entities, public utilities pursuant to the *Shroyer* test; 2) Are there certain situations in which the *Shroyer* test cannot or should not be applied? If the *Shroyer* test cannot or should not be applied, what test should the Commission apply in those situations?; 3) What impacts to customers and stakeholders would there be if the Commission were to assert jurisdiction over submetering in the state of Ohio? Direct Energy Business, LLC and Direct Energy Services, LLC (“Direct Energy”) and Interstate Gas Supply, Inc. (“IGS”) are competitive retail electric supply (“CRES”) providers in the state of Ohio and serve electric customers in each of Ohio’s investor-owned utility territories. Direct Energy and IGS submit the following Joint Initial Comments.

II. Initial Comments

Direct Energy and IGS are familiar with the issues surrounding submetering. This has been a public issue in Ohio for several years. Initially, submetering became a public issue through a series of newspaper articles.¹ At first, the content of the articles pointed to CRES providers, but upon further investigation turned toward landlords and building owners. Then, in 2014 legislation was introduced to address some consumer concerns.² Again, some parts of that legislative process confused CRES and CRES providers with submetering and entities that provider submetering. Direct Energy participated in several rounds of legislative discussions surrounding sub-metering. Throughout that process we became aware of proposed solutions to the submetering concerns that would have resulted in regulation of CRES pricing rather than dealing with submetering itself. It also became clear throughout those discussions that there is much confusion surrounding sub-metering versus the supply of electricity.

As a threshold matter, Direct Energy and IGS take no position on the Commission's jurisdiction to regulate submetering by condominium associations and similar entities in the state of Ohio. However, to the extent that the Commission determines it does have such authority, we respectfully requests that the Commission consider the following to ensure that the competitive retail electric market in Ohio is not harmed by conflating or confusing CRES or CRES providers with submetering or entities that use submetering.

A. Submetering is not the supply of electricity.

Direct Energy and IGS's interest in this docket is to ensure that, to the extent the Commission determines it has the authority to regulate submetering, action by the Commission should clearly distinguish between competitive retail electricity market issues and submetering

¹ See <http://www.dispatch.com/content/topic/news/2013/shocking-cost.html>

² See Sub. HB No. 662 (http://archives.legislature.state.oh.us/bills.cfm?ID=130_HB_662)

issues. Submetering is not the supply of electricity; rather it is a situation in which a landlord or building owner bills its tenants for the power purchased for the property. The purpose often isn't solely to recover costs for the energy use by an individual tenant but also for common areas. A CRES provider buys and sells the power to the property owner. The owner of the property is the customer of the CRES provider not individual tenants who do not hold their own utility accounts. This is a very simple example and while there are more complex forms of submetering, the ultimate point is that a CRES provider contracts with the property account holder, not the individual tenants, when a building is submetered.

Throughout the legislative process there were discussions to limit the prices of submetering invoices to average residential tariff prices, annualized prices and other versions of prices that may not be what a building owner pays. A large building that is metered and must share that price is not going to have the same price or tariff rates as a residential customer and to limit that owner's ability to recover their costs to an average residential tariff is completely inappropriate. The Commission should be very careful in this process to avoid regulating prices and costs rather than consumer disclosures. In December 2014 the issue moved to the Commission after the introduction of amendments in House Public Utilities Committee. Those amendments had fairly broad support focusing on disclosure rather than regulating prices, but did not move beyond the committee.

B. If the Commission determines it has the authority to regulate submetering, it should create a new set of rules.

To the extent that the Commission determines it has the authority to regulate submetering, it should not simply apply existing utility billing and customer disclosure rules to submetering entities. Instead, it should create a new set of rules that clearly defines submetering and entities that use submetering. As noted earlier, properties that are submetered are often large customers

who are on non-residential tariffs and therefore do not pay the same types of riders or demand charges as a residential customer. These companies would not be able to recreate a residential bill because their tenants are not subject to the same residential tariffs or prices.

Therefore, to the extent that the Commission does decide to regulate submetering, Direct Energy and IGS would support separate disclosure requirements solely for submetering that can be very similar to CRES contract disclosure rules, but the utility billing and customer disclosure rules currently applied to CRES providers should not be simply extended to submetering entities. Rules that go beyond disclosure into limiting the amounts charged would result in a defacto regulation of CRES pricing and would very negatively impact the competitive market in Ohio. If a large commercial building who is priced on their usage and tariff is only allowed to recover from their customers/tenants a residential tariffed rate that will ultimately result in CRES being subjected to pricing commercial at residential costs.

III. Conclusion

Direct Energy and IGS take no position on the Commission's jurisdiction to regulate submetering by condominium associations and similar entities in the state of Ohio. However, to the extent that the Commission determines it does have such authority, we encourage the Commission to create consumer disclosure requirements for submetering. This would help avoid confusion in the market and assist in moving the competitive electricity market forwardrs. Direct Energy and IGS encourage the Commission to consider only consumer disclosure issues in this docket, and avoid inappropriately regulating costs or charges between a CRES provider and its customer(s) or a landlord and its tenants.

Respectfully submitted,

/s/ Jennifer L. Spinosi

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CERTIFICATE OF SERVICE

I certify that an accurate copy of the forgoing Initial Comments has been filed with the Public Utilities Commission of Ohio on January 21, 2016, and electronically served upon all parties of record via the PUCO's electronic filing system.

/s/ Jennifer L. Spinosi
Jennifer L. Spinosi

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Summary: Comments Joint Initial Comments of Direct Energy and IGS electronically filed by Ms. Jennifer L. Spinosi on behalf of Direct Energy Business, LLC and Direct Energy Services, LLC and Interstate Gas Supply, Inc.