

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF DIRECT ENERGY
BUSINESS, LLC,**

COMPLAINANT,

v.

CASE NO. 17-791-EL-CSS

**OHIO EDISON COMPANY AND THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY,**

RESPONDENTS.

**IN THE MATTER OF OHIO EDISON
COMPANY AND THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,**

COMPLAINANTS,

CASE NO. 17-1967-EL-CSS

v.

DIRECT ENERGY BUSINESS, LLC,

RESPONDENT.

ENTRY

Entered in the Journal on November 19, 2020

{¶ 1} Ohio Edison Company and The Cleveland Electric Illuminating Company (collectively, FirstEnergy or the Companies) are public utilities, as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 2} Direct Energy Business, LLC (Direct) is certified in accordance with R.C. Chapter 4928 to supply electric generation service to retail customers in Ohio.

{¶ 3} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is

in any respect unjust, unreasonable, insufficient, or unjustly discriminatory. Pursuant to R.C. 4928.16, the Commission has jurisdiction under R.C. 4905.26, upon complaint of any person, regarding the provision by an electric services company subject to certification under R.C. 4928.08 of any service for which it is subject to certification.

{¶ 4} On March 20, 2017, Direct filed a complaint against FirstEnergy in Case No. 17-791-EL-CSS, alleging that FirstEnergy had violated certain provisions of the Coordination Agreements, to which both Direct and FirstEnergy are parties, as well as FirstEnergy's Electric Generation Supplier Tariff (Supplier Tariff). Specifically, Direct asserts that FirstEnergy wrongfully requests that Direct reimburse the Companies for over five million dollars FirstEnergy claims they paid to another supplier for wholesale market charges that should have been incurred by Direct.

{¶ 5} On April 10, 2017, the Companies filed their answer to the complaint, denying many of the allegations contained therein. Additionally, the Companies raise several affirmative defenses.

{¶ 6} On September 11, 2017, FirstEnergy filed a complaint against Direct in Case No. 17-1967-EL-CSS, alleging that Direct had violated the coordination obligations set forth in the Supplier Tariff, as well as R.C. 4905.35(A), by imposing an undue prejudice or disadvantage on the other supplier that inadvertently paid for the contested portion of Direct's retail load obligation. FirstEnergy requests that the Commission order Direct to cooperate in resettlement efforts, in accordance with the Supplier Tariff, and pay restitution to the Companies for the contested amount and any additional amount, to be proven at trial, resulting from Direct's actions.

{¶ 7} Direct filed its answer to FirstEnergy's complaint on October 2, 2017, asserting several affirmative defenses and counterclaims against FirstEnergy. The counterclaims proffered by Direct generally replicate those claims asserted against the Companies in its March 20, 2017 complaint.

{¶ 8} By Entry issued March 6, 2018, the attorney examiner consolidated both cases and scheduled the evidentiary hearing to commence on May 7, 2018, at the offices of the Commission.

{¶ 9} During the hearing and post-hearing briefing period, parties discussed and submitted evidence regarding *In re Complaint of Direct Energy Business, LLC v. Duke Energy Ohio, Inc.*, Case No. 14-1277-EL-CSS (*Duke Resettlement Case*), which similarly dealt with a billing dispute over wholesale market charges. In its Opinion and Order in the *Duke Resettlement Case*, the Commission concluded that Duke, in its role as a Meter Data Management Agent under the Commission-approved supplier tariff, provided inadequate service to Direct by overestimating the net usage of one of Direct's customers, ultimately leading to Direct being overbilled by PJM Interconnection, LLC. *Duke Resettlement Case*, Opinion and Order (Apr. 10, 2019), Entry on Rehearing (June 5, 2019).

{¶ 10} Duke appealed the Commission's decision to the Supreme Court of Ohio on August 2, 2019. Subsequently, on September 17, 2020, the Supreme Court issued its decision reversing the Commission's order after finding that Duke was not acting in its capacity as a public utility, as defined in R.C. 4905.02 and 4905.03, when it was providing meter-data-management service to Direct. *In re Complaint of Direct Energy Business, LLC v. Duke Energy Ohio, Inc.*, Slip Opinion No. 2020-Ohio-4429.

{¶ 11} The attorney examiner finds it appropriate to prescribe a supplemental briefing period in order to allow parties an opportunity to argue whether and, if so, how the Commission should consider the Supreme Court's ruling in the *Duke Resettlement Case* for purposes of these proceedings. Accordingly, any supplemental brief on this narrow issue should be filed by December 21, 2020.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That supplemental briefs be filed in accordance with Paragraph 11. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Megan J. Addison

By: Megan J. Addison
Attorney Examiner

SJP/kck

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in

Case No(s). 17-0791-EL-CSS, 17-1967-EL-CSS

Summary: Attorney Examiner Entry ordering any supplemental brief be filed by 12/21/20. electronically filed by Kelli C. King on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio