

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio Edison)	
Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company's Compliance with R.C.)	Case No. 17-974-EL-UNC
4928.17 and the Ohio Adm. Code Chapter)	
4901:1-37.)	

**MOTION FOR LEAVE TO INTERVENE OUT OF TIME
OF
DIRECT ENERGY BUSINESS, LLC AND
DIRECT ENERGY SERVICES, LLC**

In accordance with R.C. 4903.221 and Ohio Admin. Code 4901-1-11, Direct Energy Services, LLC and Direct Energy Business, LLC, (collectively, Direct Energy) request issuance of an entry granting leave to intervene out of time in this proceeding. The reasons supporting this intervention are stated below in the Memorandum in Support.

Respectfully submitted,

/s/ Lucas A. Fykes
Mark A. Whitt (0067996)
Lucas A. Fykes (0098471)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com

*Attorneys for Direct Energy Business LLC and
Direct Energy Services, LLC*

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio Edison)
Company, The Cleveland Electric)
Illuminating Company, and The Toledo)
Edison Company's Compliance with R.C.)
4928.17 and the Ohio Adm. Code Chapter)
4901:1-37.)

Case No. 17-974-EL-UNC

MEMORANDUM IN SUPPORT

I. Motion to Intervene Out of Time

Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, Direct Energy) request leave to intervene in this proceeding out-of-time. While the original procedural schedule in this proceeding set October 20, 2018 as the deadline for intervention¹, the “Commission may... waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.” O.A.C. 4901:1-40-02(B).

Good cause exists to grant Direct intervention in this proceeding. Circumstances have changes substantially since the original intervention deadline. As a result of the various investigations surrounding Am. Sub. H.B. 6 (H.B.6), the Commission is conducting an additional audit of FirstEnergy's compliance with Ohio's corporate separation laws to ensure FirstEnergy did not improperly use money collected from consumers or violate any utility regulatory laws, rules or orders in its activities regarding H.B.6. The outcome will have a direct impact on Direct Energy's retail electric supply customers in FirstEnergy's utility territories, as discussed below.

¹ Entry, ¶18 (Sept. 20, 2018).

Further, while Direct was previously involved in this proceeding as a member of the Retail Energy Supply Association (RESA), Direct Energy is no longer a member of that organization. Instead, Direct Energy seeks leave to intervene out-of-time here to protect its interests.

Given that substantial new details have emerged since the deadline for intervention in this proceeding, and that Direct Energy is no longer able to represent its interests as a RESA member, good cause exists for the Commission to grant Direct Energy leave to intervene out-of-time in this proceeding.

II. Motion to Intervene

R.C. 4903.221 confers a right to intervene to any person who may be "adversely affected" by a Commission proceeding. In considering a request to intervene, the Commission must consider the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues, and whether intervention would unduly delay the proceeding. *See* R.C. 4903.221(B)(1-4).

Direct Energy meets all of the criteria for intervention. Direct Energy holds Certificate Nos. 00-019E and 00-005E as a competitive retail electric service provider from the Commission to engage in the competitive sale of electric service to retail customers in Ohio. Direct Energy currently provides service to retail electric customers in the FirstEnergy service territories. Direct Energy has a real and substantial interest in this proceeding, including, but not limited to, ensuring that FirstEnergy is in compliance with the Commission's corporate separation laws did not improperly use money collected from consumers or violate any utility regulatory laws, rules or orders in its activities regarding Am. Sub. H.B.6. Further, the outcome of this proceeding will have a direct impact on

Direct Energy's retail electric supply customers in FirstEnergy utility territories.

The issues impacting Direct Energy, as identified above, demonstrate the depth of Direct Energy's real and substantial interest in this case. Direct Energy will advance legal positions that are directly relevant to the merits of the case and Direct Energy's position. Additionally, Direct Energy's direct and unique pecuniary interest in this proceeding cannot be represented by other intervenors. Direct Energy's unique expertise and participation in the competitive retail and wholesale markets in Ohio and across the country will significantly contribute to the development of a full and complete record to assist the Commission in its consideration. Finally, Direct Energy's intervention will not unduly delay the instant proceedings.

Accordingly, Direct Energy respectfully requests that the Commission grant this Motion to Intervene.

Dated: May 24, 2021

Respectfully submitted,

/s/ Lucas A. Fykes

Mark A. Whitt (0067996)

Lucas A. Fykes (0098471)

WHITT STURTEVANT LLP

The KeyBank Building, Suite 1590

88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3946

whitt@whitt-sturtevant.com

fykes@whitt-sturtevant.com

*Attorneys for Direct Energy Business LLC and
Direct Energy Services, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum in Support was served by electronic mail this 24th day of May, 2021 to the following:

/s/ Lucas A. Fykes

One of the Attorneys for Direct Energy Services, LLC and Direct Energy Business, LLC

SERVICE LIST

thomas.lindgren@ohioattorneygeneral.gov
[v
erner.margard@ohioattorneygeneral.gov](mailto:verner.margard@ohioattorneygeneral.gov)
joliker@igsenergy.com
Mnugent@igsenergy.com
bethany.allen@igs.com
gkrassen@bricker.com
dstinson@bricker.com
ccox@elpc.org
rkelter@elpc.org
rlazer@elpc.org
trhayslaw@gmail.com
leslie.kovacik@toledo.oh.gov
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com
mfleisher@dickinsonwright.com

mwise@mcdonaldhopkins.com
bknipe@firstenergycorp.com
mrgladman@jonesday.com
mdengler@jonesday.com
radoringo@jonesday.com
mwager@taftlaw.com
iavalon@taftlaw.com
mpritchard@mcneeslaw.com
tlong@mcneeslaw.com
rdove@keglerbrown.com
Maureen.willis@occ.ohio.gov
john.finnigan@occ.ohio.gov
mleppla@theOEC.org
tdougherty@theOEC.org
ctavenor@theoec.org
Bojko@carpenterlipps.com
Donadio@carpenterlipps.com

Attorney Examiners:

Megan.addison@puco.ohio.gov
Gregory.price@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/24/2021 5:17:45 PM

in

Case No(s). 17-0974-EL-UNC

Summary: Motion Motion for Leave to Intervene Out of Time and Memorandum in Support electronically filed by Ms. Valerie A Cahill on behalf of Direct Energy Business, LLC and Direct Energy Services, LLC