

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Direct Energy Services, : Case No. 22-583-GE-UNC  
LLC :

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**JOINT STIPULATION AND RECOMMENDATION**

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Ohio Adm.Code 4901-1-30 provides that two or more parties to a Public Utilities Commission of Ohio (Commission) proceeding may enter into a written stipulation concerning the issues presented in the proceeding.<sup>1</sup> This Joint Stipulation and Recommendation (Stipulation) sets forth the understanding and agreement of Direct Energy Services, LLC (Direct Energy) and the Staff of the Commission (Staff). Direct Energy and Staff (collectively, Signatory Parties) recommend that the Commission approve and adopt this Stipulation, which will resolve all of the issues identified by Staff in its Notice of Probable Non-Compliance dated June 9, 2021 (Notice Letter), attached as Exhibit A.

The Stipulation represents a just and reasonable resolution of the issues raised in this proceeding, violates no regulatory principle or precedent, and it is the product of bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the Signatory Parties representing a range of

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<sup>1</sup> Pursuant to Ohio Adm.Code 4901-1-1(C), the Staff is considered a party for purposes of Ohio Adm.Code 4901-1-30.

interests, to resolve the issues in this proceeding. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by this proceeding, the Signatory Parties stipulate, agree and recommend as set forth below.

This Stipulation is the product of an open process in which all parties were represented by able counsel and technical experts, and represents a comprehensive compromise by the Signatory Parties with diverse interests of the issues raised. The only parties to the proceeding, Direct Energy and Staff, have signed the Stipulation and adopted it as a reasonable resolution of all issues. The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement achieved by the Stipulation, as a package, benefits consumers and is in the public interest, and that the settlement does not violate any important regulatory principle or practice. Pursuant to Ohio Adm.Code 4901-1-30, the Signatory Parties hereby stipulate, agree, and recommend that the Commission make the following findings and issue its Finding and Order in this case approving this Stipulation in accordance with the following:

### **History**

1. Direct Energy provides competitive retail electric service (CRES), as that term is defined in R.C. 4928.01, and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16.

2. Direct Energy provides competitive retail natural gas service (CRNGS), as that term is defined in R.C. 4929.01, and is subject to the jurisdiction of this Commission pursuant to R.C. 4929.24.
3. On June 9, 2021, Staff issued the Notice Letter to Direct Energy regarding several issues identified therein. (Exhibit A).
4. Direct Energy and Staff have engaged in numerous discussions to address the issues raised in Staff's Notice Letter and have reached a resolution of all issues.

### **Joint Recommendations of Signatory Parties**

The Signatory Parties stipulate, agree and recommend that the Commission make the following findings and issue its Finding and Order in this proceeding approving this Stipulation. The Signatory Parties agree that, for purposes of settlement and in consideration of the terms and mutual promises set forth herein, the Commission should approve this Stipulation without modification as follows:

- A. Direct Energy has implemented/provided or will implement the actions set forth below as soon as is practicable after the Commission approves this Stipulation:
  1. Has provided Staff with a plan to come into compliance with Commission rules. The plan should address, at least, enrollment practices, an auditing process for enrollments, and any corrective actions to be implemented by Direct Energy.
  2. Has submitted to Staff a list of all vendors, contact information, and agents that have marketed on behalf of Direct Energy for the period of December 1, 2020 through May 31, 2021. Also include the number of attempted enrollments for the identified agents along with the number of successful enrollments.

3. Has reviewed all door-to-door enrollments completed within the 3 months preceding the Notice Letter,<sup>2</sup> and has taken/will take the following actions:
  - a. Review each contract, third-party verification, and other enrollment documentation for completeness, accuracy, and customer consent.
  - b. Contact each customer where enrollment documents are not complete or the customer's consent is not certain.
  - c. Give each customer contacted in 3.b. above, the option to cancel without any penalties or to re-enroll with Direct Energy, in which case, new enrollment and consent must be obtained in accordance with Ohio Adm.Code 4901:1-21-06 and/or 4901:1-29-06.
  - d. Review all customer complaints that noted similar issues with the sales representatives to determine patterns of misleading and deceptive practices.
4. Has provided Staff with telemarketing calls for the period of January 31, 2021 through February 6, 2021,<sup>3</sup> including a listing of all vendors.
5. Has reviewed all marketing and sales scripts for compliance with rules and has submitted updated versions of these documents to Staff for review. If Direct Energy modifies its scripts in the six months following the Commission's approval of this Stipulation, Direct Energy will submit the updated scripts to Staff.

B. The following process applies to the release of any document or information marked as confidential. Three days' prior, a notice of intent to disclose shall be provided to the party claiming confidentiality. Three days after such notice, Staff may disclose or otherwise make use of such documents or information for any lawful purpose,

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<sup>2</sup> Direct Energy's review covered the period of March 9, 2021 through June 9, 2021. A response was completed and submitted to Staff on August 16, 2021.

<sup>3</sup> Direct Energy's response was submitted to Staff on September 24, October 7, October 15, 2021 and February 25, 2022.

unless the Commission receives a request for a protective order pertaining to such documents or information within the three-day notice period. The three-day notice period will be computed according to Ohio Adm.Code 4901-1-07.

- C. Direct Energy agrees to pay a forfeiture of \$275,000 upon approval of this Stipulation by the Commission. The payment shall be paid within 30 days of the Finding and Order approving this Stipulation and shall note the docket number assigned to this matter.

### **Procedural Matters**

1. The Signatory Parties agree that this Stipulation shall not be relied upon as precedent for or against any party to this proceeding in any subsequent proceeding, except as may be necessary to enforce the terms of this Stipulation or as part of the Company's history in determining the appropriate forfeiture or corrective action for any future violations. This Stipulation is not an admission or finding of liability. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.
2. This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Should the Commission reject or materially modify all or any part of this Stipulation, the Signatory Parties shall have the right, within 30 days of issuance of the Commission's Order, to file an Application for Rehearing. Should the Commission, in issuing an Entry on Rehearing, not adopt the Stipulation in its entirety and without material

modification, any Signatory Party may withdraw from the Stipulation. Such withdrawal shall be accomplished by filing a notice with the Commission, including service to all parties, in the docket within 30 days of the Commission's Entry on Rehearing. Prior to the filing of such notice, the Signatory Party wishing to withdraw agrees to work in good faith with the other Signatory Party to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Signatory Party wishing to withdraw, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, and a Signatory Party files a notice to withdraw from the Stipulation, then the Commission will convene an evidentiary hearing such that the withdrawing party will be afforded the opportunity to contest the Stipulation by presenting evidence through witnesses and cross-examination, presenting rebuttal testimony, and briefing all issues that the Commission shall decide based upon the record and briefs.

3. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an Application for Rehearing designed to defend the terms of this Stipulation. If the Stipulation is adopted by the Commission, the Signatory Parties will support the Stipulation in any appeal of the decision.

## Conclusion

WHEREFORE, the Signatory Parties agree and recommend this 10<sup>th</sup> day of June, 2022, that the Commission find that the Stipulation represents a reasonable resolution of this matter, and that the Stipulation should be adopted and approved.

On behalf of the Staff of the Public Utilities  
Commission of Ohio:

/s/Thomas G. Lindgren

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Counsel for Staff of the Public Utilities  
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On behalf of Direct Energy Services,  
LLC:

/s/ Gretchen L. Petrucci

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Counsel for Direct Energy Services, LLC



# Public Utilities Commission

Mike DeWine, Governor  
Jenifer French, Chair

**EXHIBIT A**

Commissioners

M. Beth Trombold  
Lawrence K. Friedeman  
Dennis P. Deters  
Daniel R. Conway

June 09, 2021

John Holtz  
Direct Energy Services LLC  
12 Greenway Plaza, Suite 250  
Houston, TX 77046

Dear Mr. Holtz:

Pursuant to Ohio Administrative Code (“Ohio Adm.Code”) 4901:1-23-02 and 4901:1-34-03, this letter is a notice of probable non-compliance to Direct Energy Services LLC (“Direct Energy”). Based on our investigation of consumer complaints, Staff of the Public Utilities Commission of Ohio (“Staff”) finds that Direct Energy is in probable non-compliance with certain sections of the Ohio Administrative Code.

Staff reviewed investigation records from consumer complaints along with information provided by Direct Energy in response to those complaints. The consumer contact records reviewed by Staff included complaints of misleading and incomplete information, and customers disputing their enrollment with Direct Energy. Based on this review, Staff has determined that representatives of Direct Energy provided misleading and deceptive information to consumers; that Direct Energy failed to maintain accurate records; and that Direct Energy’s enrollment information is incomplete.

Staff is aware of at least one call that was manipulated prior to being provided as part of a response to an investigation. According to the customer, the call started as a recording (robocall) stating it was an apology from the utility. The agent, “Steve,” came on the line stating that he was with the “supply department” and the customer qualified for a discount program, would no longer have to pay a \$15 monthly fee, and they would receive a \$70 gift card for the next three months. The customer was coached on how to answer the third-party verification (TPV) questions, and that the contract being sent to the customer would need to be signed and returned. Direct Energy’s response to the investigation indicated that the vendor involved in this specific interaction is New Wave Power. There are additional consumers who complained of receiving similar type telephone calls.

In addition, Staff also found instances of door-to-door agents providing misleading and deceptive information to consumers. Multiple consumers complained that agents were being untruthful, including agents stating they needed to see the utility bill to verify that everything was correct, implying the agent was with the utility, and that the customer’s contract needs to be renewed even though the customer was not currently with Direct Energy. Finally, Staff found that the acknowledgment form required as part of door-to-door natural gas enrollments was not completed.



## Probable Non-Compliance Violations

1. Ohio Adm.Code 4901:1-21-03(A) “Competitive retail electric service (CRES) providers shall not engage in unfair, misleading, deceptive or unconscionable acts or practices related to, without limitation the following activities: (1) Marketing, solicitation, or sale of a CRES. (2) Administration of contracts for CRES. (3) Provision of CRES, including interactions with consumers.”
2. Ohio Adm.Code 4901:1-29-03(A) “A retail natural gas supplier [“CRNGS”] or governmental aggregator shall not engage in unfair, misleading, deceptive, or unconscionable acts of practices related to, without limitation, the following activities: (1) Marketing, solicitation, or sale of a competitive retail natural gas service. (2) Administration of contracts for such service. (3) Provision of such service, including interactions with customers.”
3. Ohio Adm.Code 4901:1-21-03(C) “CRES providers shall not change or authorize the changing of a customer’s supplier of retail electric service without the customer’s prior consent, as provided for under rule 4901:1-21-06 of the Administrative Code.”
4. Ohio Adm.Code 4901:1-29-03(D) “A retail natural gas supplier or governmental aggregator shall not change or authorize the changing of a customer's supplier of competitive retail natural gas service without the customer's prior consent, as provided for under rule 4901:1-29-06 of the Administrative Code.”
5. Ohio Adm.Code 4901:1-21-04(A) “Each competitive retail electric service provider shall establish and maintain records and data sufficient to: (1) Verify its compliance with the requirements of any applicable commission rules. (2) Support any investigation of customer complaints.”
6. Ohio Adm.Code 4901:1-29-04(A) “Each natural gas company (for records retention related to competitive retail natural gas services), each retail natural gas supplier and each governmental aggregator shall establish and maintain records and data sufficient to: (1) Verify its compliance with the requirements of any applicable commission rules. (2) Support any investigation of customer complaints.”
7. Ohio Adm.Code 4901:1-21-05(C) “No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES.”
8. Ohio Adm.Code 4901:1-29-05(D) “No retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service.”
9. Ohio Adm.Code 4901:1-21-06(C) “CRES providers are prohibited from enrolling potential customers without their consent proof of that consent as delineated in paragraph (D) of this rule.”

10. Ohio Adm.Code 4901:1-21-06(D)(1)(b) provides, in relevant part, that “\* \* \* prior to entering into a contract for service, CRES providers shall provide each customer with enrollment documents\* \* \* .”
11. Ohio Adm.Code 4901:1-21-06(D)(1)(c) “Before obtaining a signature from the applicant, CRES providers shall provide each customer a reasonable opportunity to read all enrollment documents and shall answer any and all questions posed by any applicant about information contained in the documents.”
12. Ohio Adm.Code 4901:1-29-06(B) “A retail natural gas supplier and governmental aggregator is prohibited from enrolling potential customers without consent and proof of that consent as delineated in paragraphs (C), (D), and (E) of this rule.”
13. Ohio Adm.Code 4901:1-29-06(D)(2) “Prior to entering into a contract for service, a retail natural gas supplier or governmental aggregator shall provide each customer with enrollment documents...”
14. Ohio Adm.Code 4901:1-29-06(D)(3) “Before obtaining a signature from the applicant, a retail natural gas supplier or governmental aggregator shall provide each customer a reasonable opportunity to read all enrollment documents and shall answer any and all questions posed by any applicant about information contained in the documents.”
15. Ohio Adm.Code 4901:1-29-06(D)(6)(a) “A retail natural gas supplier or governmental aggregator enrolling customer through door-to-door solicitation shall have the customer execute an acknowledgement form as part of and at the time of the door-to-door enrollment process. The acknowledgment form shall include, at a minimum, the following statements or questions: \* \* \* .”

### **Proposed Corrective Actions**

To address these issues of probable non-compliance, Staff proposes that Direct Energy take the following corrective actions:

1. Provide Staff with a plan to come into compliance with Commission rules. The plan should address, at least, enrollment practices, an auditing process for enrollments, and any corrective actions to be implemented by Direct Energy.
2. Submit to Staff a list of all vendors, contact information, and agents that have marketed on behalf of Direct Energy for the period of December 1, 2020 through May 31, 2021. Also include the number of attempted enrollments for the identified agents along with the number of successful enrollments.
3. Review all door-to-door enrollments completed within the last 3 months and take the following actions:
  - a. Review each contract, TPV, and other enrollment documentation for completeness, accuracy, and customer consent.
  - b. Contact each customer where enrollment documents are not complete or the customer’s consent is not certain.
  - c. Give each customer identified in 3.b. above, the option to cancel without any penalties or to re-enroll with Direct Energy, in which case, new enrollment and

consent must be obtained in accordance with Ohio Adm.Code 4901:1-21-06 and/or 4901:1-29-06.

- d. Review all customer complaints that noted similar issues with the sales representatives to determine patterns of misleading and deceptive practices.
4. Provide Staff with all telemarketing calls for the period of January 15, 2021 through February 15, 2021. Include a listing of which vendor and agent was responsible for each marketing attempt.
5. Review all marketing and sales scripts for compliance with rules. Submit updated versions of these documents to Staff for review.

Additionally, Staff recommends that Direct Energy cease all residential and small commercial marketing and enrollment activities in the State of Ohio until this matter is resolved. In accordance with R.C. 4905.54 and Ohio Adm.Code 4901:1-21-15(A)(1), Staff will view any continuation in Direct Energy's retail marketing and enrollments that result in violations to constitute additional offenses. Additional offenses may result in additional enforcement actions, including rescission of Direct Energy's CRES and CRNGS certificates and forfeitures to the state of up to ten thousand dollars (\$10,000) per offense.

### **Proposed Forfeiture**

Finally, Staff is proposing a forfeiture of two-hundred seventy-five thousand dollars (\$275,000) against Direct Energy for the above-mentioned failures to comply with the requirements found in the Ohio Administrative Code.

By Wednesday, June 23, 2021, please respond to this notice of probable non-compliance with Direct Energy's plan to address the above proposed corrective actions.

Sincerely,



Melissa Scarberry  
Public Utilities Commission of Ohio  
Service Monitoring and Enforcement  
Utility Specialist 2  
Melissa.Scarberry@puco.ohio.gov

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Summary: Stipulation and Recommendation electronically filed by Mrs. Tonnetta Y.  
Scott on behalf of PUCO