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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

In the Matter of the Alternative Energy Resources Report for calendar year 2009 for Semptra Energy Solutions, LLC	)	Case No. 10-462-EL-ACP
	)	
In the Matter of the Alternative Energy Resources Report for calendar year 2009 for Constellation NewEnergy, Inc.	)	Case No. 10-495-EL-ACP
	)	
In the Matter of the Alternative Energy Resources Report for calendar year 2009 for Gexa Energy Ohio, LLC	)	Case No. 10-496-EL-ACP
	)	
In the Matter of the Alternative Energy Resources Report for calendar year 2009 for Direct Energy Business, LLC	)	Case No. 10-497-EL-ACP
	)	
In the Matter of the Alternative Energy Resources Report for calendar year 2009 for Direct Energy Services, LLC	)	Case No. 10-498-EL-ACP
	)	
In the Matter of the Alternative Energy Resources Report for calendar year 2009 for Integrys Energy Services, Inc.	)	Case No. 10-507-EL-ACP
	)	

NOT CONSOLIDATED

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**REPLY BY OHIO MEMBERS OF THE RETAIL ELECTRIC  
SUPPLY ASSOCIATION TO THE COMMENTS FROM THE  
OHIO ENVIRONMENTAL COUNCIL**

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Now come Constellation NewEnergy, Inc., Direct Energy Services, LLC, Direct Energy Business, LLC, Gexa Energy Ohio, LLC, Integrys Energy Services, Inc. and Semptra Energy Solutions, LLC all of whom are Commission authorized Competitive Retail Electric

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Service providers (CRES) doing business in Ohio and all of whom belong to the Retail Electric Supply Association (hereinafter "RESA CRES") and reply to the comments filed by the Ohio Environmental Council on May 17th and supplemental comments filed on May 18th. The purpose of these Reply Comments is to clarify the record in this matter.

On April 2, 2010, the RESA CRES petitioned the Commission to find that *force majeure* conditions existed as to the availability of Solar Renewable Energy Credits (S-RECs) for calendar year 2009.<sup>1</sup> Section 4928.64(C)(4), Revised Code, specifically authorizes the Commission to make such findings. Prior to the RESA CRES application, similar *force majeure* determinations for S-RECs were sought by The Toledo Edison Company, The Ohio Edison Company, Cleveland Electric Illuminating Company, Ohio Power Company, Columbus Southern Power Company, Dayton Power & Light Company and DPL Energy Resources, Inc. which subsequently were granted by the Commission.

The RESA CRES application for a *force majeure* determination was based largely on the Commission's records of generation capacity for the solar facilities which in 2009 were certificated by the Commission as S-REC generators and the fact that there were simply an insufficient number of certified solar generators to meet the 2009 S-REC requirements. In light of the *force majeure* conditions, the RESA CRES only asked that S-RECs be waived for 2009, and that for 2010 if S-RECs were available each RESA CRES would obtain S-RECs equal to the amount not only needed for 2010 but also to make up any shortfall for 2009.

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<sup>1</sup> *In Re RESA* Case No. 10-428-EL-ACP (April 28, 2010)

The RESA CRES requested an expedited ruling on the *force majeure* determination as the Alternative Energy Report for 2009 was due for all utilities and CRES on April 15, 2010. On April 15, 2010 all of the RESA CRES filed their Alternative Energy Report for 2009 as called for by Section 4928.64, Revised Code. The captions listed on the first page of this pleading list the docket numbers assigned to each of the RESA CRES for their 2009 Alternative Energy Report. On the subject of S-RECs, all the RESA CRES in their Renewable Energy Report noted that they had sought a *force majeure* determination as to S-RECs in 2009.

On April 28, 2010 the Commission granted the RESA CRES petition finding:

ORDERED, That RESA CRES providers' request for a force majeure waiver of 2009 SER benchmarks be granted and, to the extent the RESA CRES providers did not comply with the 2009 SER benchmarks, the 2010 benchmarks be increased.<sup>2</sup>

On May 17, 2010 the Ohio Environmental Council filed in four of the five RESA CRES Alternative Energy Report cases identical comments stating:

We request that [name of the RESA CRES] application [Renewable Energy Report for 2009] be denied until the application is amended to include descriptions of efforts instigated to comply with the solar requirement of sufficient quality to justify the approval of a force majeure application<sup>3</sup>.

On May 18, 2010, the Ohio Environmental Council was informed of the Commission's order in Case No. 10-428-EL-ACP. The Ohio Environmental Council then filed a supplement to their original comments. In its May 18<sup>th</sup> amended comments, the Ohio Environmental Council

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<sup>2</sup> *Id.*

<sup>3</sup> Comments on the Alternative Energy Resource Report for Calendar Year 2009 at p. 2, filed in all the above styled dockets except Sempra Energy Solutions, LLC in Case No. 10-462-EL-ACP. The Ohio Environmental Council did file comments in Case No. 10-498-EL-ACP (Direct Energy Services, LLC), though unlike Sempra, Direct Energy Services, LLC was inactive in 2009.

states that its request to deny the individual RESA CRES providers Alternative Energy Reports is now moot. Thus, there no longer appears to be a controversy as to the acceptance of the RESA CRES Alternative Energy Reports.

The remainder of the Ohio Environmental Council's May 18<sup>th</sup> comments address how the Commission should issue *force majeure* findings. Specifically, the Ohio Environmental Council requests that the Commission cease the use of blanket *force majeure* findings and grant *force majeure* only on an individual electric service company basis. There are seven electric utilities, 32 CRES and over 50 brokers and aggregators registered with the Commission. If common *force majeure* conditions exist, judicial economy may well favor issuance of blanket orders. The Commission should not abandon such a useful procedural tool.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply by Ohio Members of the Retail Electric Supply Association to the Comments from the Ohio Environmental Council was served on May 21, 2010 via email and by First Class U.S. Mail, postage prepaid, on the party listed below.



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