BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for the Alternative Energy Portfolio Standard Contained in Chapter 4901:1-40 of the Ohio Administrative Code.	))))	Case No. 13-652-EL-ORD

INITIAL COMMENTS OF DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC

Joseph M. Clark
(Counsel of Record)
Direct Energy
21 East State Street, 19th Floor
Columbus, OH 43215
joseph.clark@directenergy.com
(Willing to accept service via e-mail)

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Attorney for Direct Energy Services, LLC
and Direct Energy Business, LLC

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I. INTRODUCTION

On July 11, 2014, the Attorney Examiner in this proceeding issued an Entry setting a comment period to answer two (2) questions related to implementation of recently enacted Substitute Senate Bill 310 ("Sub.S.B. 310"). Specifically, the Entry asks:

(A) Does the General Assembly's amendment to R.C. 4928.64(B)(3) by Sub.S.B. 310 require the Commission to amend Ohio Adm.Code 4901:1-40-03 to eliminate the in-state requirement in its entirety, including the portion of 2014 prior to the effective date of Sub.S.B. 310?

(B) Does the General Assembly's amendment to R.C. 4928.64(B)(3) by Sub.S.B. 310 require the Commission to amend Ohio Adm.Code 4901:1-40-03 to prorate the in-state requirement for 2014 based upon the effective date of SubS.B. 310 and to eliminate the requirement thereafter?

Direct Energy respectfully suggests the answer to question (A) is Yes and therefore question (B) is moot. The Commission should amend Rule 4901:1-40-03 to recognize the General Assembly eliminated the in-state requirement in its entirety, including the portion of 2014 prior to the effective date of SubS.B. 310.

II. INITIAL COMMENTS

SubS.B. 310, as will be effective on September 12, 2014, simply and clearly states that "by end of year" electric distribution utilities ("EDU") and electric services companies (e.g. competitive retail electric supply or "CRES" providers) must procure a certain portion of electricity supply from qualifying renewable energy resources.[1] Sub.S.B. 310 removes the in-state requirement previously found in R.C. 4928.64(B)(3). The compliance obligation for 2014 under R.C. 4928.64(C)(1) is to meet the "most recent applicable benchmark" under division (B)(2) of R.C. 4928.64, which contains the " by end of year" provision. Simply put, the law will have changed (effective September 12, 2014) prior to the end of the current year and the "most recent applicable benchmark" is the benchmark enacted under Sub.S.B. 310 that will be effective on December 31, 2014. The "most recent applicable benchmark" that will occur "by end of year" 2014 does not contain any mandate for any portion of any year.

Despite being contrary to the plain language of the statute, a reading of Sub.S.B. 310 that would require prorated compliance also suffers from other defects. First, Sub.S.B. 310 does not contain, nor did it previously contain, requirements for compliance during portions of the year. Compliance must simply happen "by end of year." There is nothing in Sub.S.B. 310 that grandfathers the in-state requirement for any period of time. If the General Assembly wanted prorated compliance with the former in-state requirement it would have said so in Sub.S.B. 310. The Commission should not now read one into the law.

Additionally, if the Commission reads into Sub.S.B. 310 a prorated mandate it will have forced EDUs and CRES providers to have assumed under the previous version of the law more granular compliance requirements (e.g. renewable energy credit ("REC") purchases should have

[1] See R.C. 4928.64(B)(2), as found in enrolled version of Sub.S.B. 310 at http://www.legislature.state.oh.us/BillText130/130_SB_310_EN_N.pdf (page 19).

been made as the year rolled along, perhaps on a month by month or quarterly basis) than the "by end of year" directive from the General Assembly. Nothing in the Commission's rules or precedent has ever even hinted at such an interpretation of R.C. 4928.64. Nor should the Commission delve that deeply into the business operations of how a CRES provider complies with the law "by end of year."

Finally, Sub.S.B. 310 also provides a new option for the baseline that is used to calculate the annual benchmarks. Sub.S.B. 310 enacts a new section (R.C. 4928.643), which beginning with compliance year 2014, allows an EDU or CRES provider to choose a compliance baseline calculation of either the total kilowatt hours ("kWh") sold in the applicable compliance year or the former baseline calculation of an average of the three (3) previous years' kWh sales. If the Commission reads into Sub.S.B. 310 the more granular in-state requirement, and the EDU or CRES provider chooses its new option in R.C. 4928.643(B) to use the compliance year total kWh sales as the baseline, it will have then also imposed the more granular compliance requirement on a baseline that was not even in existence at the time that the Commission would be saying that RECs should have been purchased. This reading would defy common sense and also subject an EDU or CRES provider to a standard that would not and could not have been known at the time that such REC purchases would have been expected to be made.

III. CONCLUSION

Direct Energy respectfully requests the Commission answer question (A) in the affirmative and confirm that the General Assembly eliminated the in-state requirement in its entirety, including the portion of 2014 prior to the effective date of SubS.B. 310. Direct Energy also reserves the right to file reply comments in this docket.

Respectfully submitted,

/s/ Joseph M. Clark

Joseph M. Clark
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
(614) 220-4369
joseph.clark@directenergy.com

Attorney for Direct Energy Services, LLC and
Direct Energy Business, LLC

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties. In addition, I hereby certify that a service copy of the foregoing *Initial Comments of Direct Energy Services and Direct Energy Business* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 31st day of July 2014 via e-mail, except those specifically designated as being served via U.S. Mail.

/s/ Joseph M. Clark
Joseph M. Clark

Ohio Partners for Affordable Energy (drinebolt@ohiopartners.org)

The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company (kjkolich@firstenergycorp.com and cdunn@firstenergycorp.com)

OMA Energy Group (bojko@carpenterlipps.com, hussey@carpenterlipps.com, mohler@carpenterlipps.com)

Ohio Power Company (stnourse@aep.com and mjsatterwhite@aep.com)

Nucor Steel Marion, Inc. (mkl@bbrslaw.com)

Alliance for Industrial Efficiency (jennifer@dgardiner.com)

The Heat is Power Association (susan@heatispower.org)

Energy Resources Center (cuttica@uic.edu)

FirstEnergy Solutions Corp (haydenm@firstenergycorp.com and scasto@firstenergycorp.com)

Duke Energy Ohio, Inc. (amy.spiller@duke-energy.com and elizabeth.watts@duke-energy.com)

The Ohio Hospital Association (ricks@ohanet.org and tobrien@bricker.com)

The Dayton Power and Light Company (judi.sobecki@aes.com)

Ohio Advanced Energy Economy (todonnell@dickinsonwright.com and cmontgomery@dickinsonwright.com)

Interstate Gas Supply, Inc (mswhite@igsenergy.com)

Ohio Consumers' Counsel (terry.etter@occ.ohio.gov)

Ohio Environmental Council and Ohio Coalition for Combined Heat and Power (trent@theoec.org)

Environmental Law and Policy Center (nmcdaniel@elpc.org)

Sierra Club (callwein@wamenergylaw.com)

Environmental Defense Fund (jfinnigan@edf.org)

Natural Resources Defense Council (swilliams@nrdc.org)

Citizens Coalition (meissnerjoseph@yahoo.com)

PJM Environmental Information Services (evelyn.robinson@pjm.com)

Union Neighbors United (cwalker@vankleywalker.com)

PUCO Staff (william.wright@puc.state.oh.us)

Attorney Examiners (richard.bulgrin@puc.state.oh.us and bryce.mckenney@puc.state.oh.us)

Served via U.S. Mail (no e-mail address provided)

Cliff Haefke, President
Patricia F. Sharkey, Policy Committee Chair
Midwest Cogeneration Association
Environmental Law Counsel
180 N. LaSalle Street
Suite 3700
Chicago, IL 60601

Allyson Umberger
Director of Regulatory Affairs & General Counsel
SRECTrade, Inc.
90 New Montgomery St., Suite 333
San Francisco, CA 94105

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Summary: Comments (Initial) electronically filed by JOSEPH CLARK on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC