

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Alternative Energy) Case No. 10-498-EL-ACP
Resources Report For Calendar Year 2009)
From Direct Energy Services, LLC)

**COMMENTS ON THE ALTERNATIVE ENERGY RESOURCES REPORT FOR
CALENDAR YEAR 2009 FROM DIRECT ENERGY SERVICES, LLC
BY
THE OHIO ENVIRONMENTAL COUNCIL**

I. INTRODUCTION

On April 15, 2010 Direct Energy Services, LLC (“DES”) filed an Alternative Energy Portfolio Status Report (“Status Report”) for calendar year 2009. Pursuant to Ohio Adm. Code 4901:1-40-05(B), the Ohio Environmental Council (“OEC”) files comments addressing the DES Status Report.

The Status Report, as submitted by the DES on April 15, 2010, demonstrates that DES failed to acquire sufficient solar renewable energy credits to comply with the statutory benchmark for 2009.¹ DES’s failure to provide any description of efforts to comply with the solar requirement precludes approval of a force majeure determination at this time. Accordingly, the OEC respectfully submits comments for consideration as part of the PUCO review process outlined in Ohio Administrative Code 4901:1-40-05(B), (C) and (D). We request that DES’s application be denied until the application is amended to include descriptions of efforts to comply with the solar requirement.

¹ *In the Matter of The Alternative Energy Resources Report For Calendar Year 2009 From Direct Energy Services, LLC*, Case No. 10-498-EL-ACP, Report at 4 (April 15, 2010).

II. COMMENTS

According to Ohio Adm. Code 4901:1-40-05(A), “[E]ach electric utility and electric services company shall file...an annual alternative energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks and planning requirements have or will be met.” To comply with the rule, DES must submit the following information as part of the annual alternative energy portfolio status report:

(1) Beginning in the year 2010, the annual review will include compliance with the most recent applicable renewable- and solar-energy resource benchmark.

* * * *

(3) The annual compliance reviews shall consider any under-compliance an electric utility or electric services company asserts is outside its control, including but not limited to, the following:

(a) Weather-related causes.

(b) Equipment shortages for renewable or advanced energy resources.

(c) Resource shortages for renewable or advanced energy resources.²

Ohio law requires that solar energy resources account for at least 0.50% of the renewable energy generated in Ohio by the year 2025.³ In addition, utilities must obtain at least half of that requirement from within Ohio.⁴ The statute requires utilities to begin developing SERs in 2009 and to meet annual statutory benchmarks until reaching the 0.50% level by 2025. O.R.C. §4928.64(B)(2) includes a chart setting the annual requirements for

² Ohio Adm. Code 4901:1-40-05(A)

³ O.R.C. §4928.64(B)(2).

⁴ O.R.C. §4928.64(B)(3).

solar generation. For 2009, the statute requires utilities to provide at least 0.004% of their renewable energy generation from solar resources.⁵ Utilities may achieve the SER benchmarks by directly developing solar generation or through the open market purchase of solar Renewable Energy Credits (RECs).⁶

If a utility cannot meet its SER benchmark it

may request the commission to make a force majeure determination pursuant to this division regarding all or part of the utility's or company's compliance with any minimum benchmark under division (B)(2) of this section during the period of review occurring pursuant to division (C)(2) of this section. The commission may require the electric distribution utility or electric services company to make solicitations for renewable energy resource credits as part of its default service before the utility's or company's request of force majeure under this division can be made.⁷

In order to grant the force majeure application

the Commission shall determine if renewable energy resources are reasonably available in the marketplace in sufficient quantities for the utility or company to comply with the subject minimum benchmark during the review period. In making this determination, the commission shall consider whether the electric distribution utility or electric services company has made a good faith effort to acquire sufficient renewable energy or, as applicable, solar energy resources to so comply, including, but not limited to, by banking or seeking renewable energy resource credits or by seeking the resources through long-term contracts. Additionally, the commission shall consider the availability of renewable energy or solar energy resources in this state and other jurisdictions in the PJM interconnection regional transmission organization or its successor and the midwest system operator or its successor.⁸

O.R.C. §4928.64(C)(4)(c) states that a force majeure waiver “shall not automatically reduce the obligation for the electric distribution utility's...compliance in subsequent years.” Finally,

⁵ O.R.C. §4928.64(B)(2).

⁶ O.R.C. §4928.64(B).

⁷ O.R.C. §4968.64(C)(4)(a); see also O.A.C. §4901:1-40-06.

⁸ O.R.C. §4928.64(C)(4)(b).

if a utility does not meet its SER benchmark, and the PUCO does not grant a force majeure determination, the utility is subject to an “alternative compliance payment” (ACP). The 2009 ACP is \$450 per MWh of solar capacity not obtained.⁹

DES has not demonstrated through its annual status report sufficient grounds for a Commission granted force majeure determination. Specifically, DES provides no description of efforts made to comply with the standard. The OEC is aware that a motion for a protective order has been issued. However, the kinds of information necessary to grant a force majeure application can be limited to descriptions, without excessive amounts of data, of efforts to comply.

III. CONCLUSION

The OEC appreciates the opportunity to be a part of the review process for the DES’ Alternative Energy Portfolio Status Reports. DES has a duty to supply information of a sufficient quantity and quality to justify a force majeure application.

It is the State of Ohio’s policy to encourage a “diversity of electric supplies and suppliers” and “distributed and small generation facilities.”¹⁰ This policy benefits not only DES and its customers, but all Ohioans across all customer classes. A serious effort by DES to maximize its current processes of acquiring SRECS and to pursue other means to encourage solar development in Ohio will result in compliance with the statutory benchmarks for the Company and ensure diversity of electric supplies and suppliers in Ohio. DES needs to describe in detail efforts to comply with the solar requirements.

Respectfully Submitted,

⁹ O.R.C. §4928.64(C)(2)(a).

¹⁰ R.C. 4928.02(C)

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class and/or electronic mail this 17th day of May, 2010.

/s/ Nolan Moser

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Respectfully submitted,

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The undersigned hereby certifies that he has served a copy of the foregoing
Comments on the following counsel, by_____, postage prepaid, this 17th day of
May 2010.

This foregoing document was electronically filed with the Public Utilities

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Summary: Comments Comments by the Ohio Environmental Council electronically filed by
Mr. Will Reisinger on behalf of Ohio Environmental Council