

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Alternative Energy     )  
Resources Report for Calendar Year 2009     )  
From Direct Energy Services, LLC             )**

**Case No. 10-0498-EL-ACP**

---

Findings and Recommendations of the PUCO Staff

---

**I.       Statutory Background**

Senate Bill 221, with an effective date of July 31, 2008, established Ohio's alternative energy portfolio standard (AEPS) applicable to both electric distribution utilities and electric services companies. The AEPS is addressed principally in sections 4928.64 and 4928.65, Ohio Revised Code (ORC), with relevant resource definitions contained within 4928.01(A), ORC.

According to 4928.64(B)(2), ORC, the specific compliance obligations for 2009 are as follows:

- Renewable Energy Resources = 0.25% (includes solar carve-out)
- Solar Energy Resources = 0.004%

In addition, there is a requirement that at least half of the renewable energy resources, including the solar energy resources, shall be met through facilities located in this state.

The PUCO further developed rules to implement the Ohio AEPS, with those rules contained within Ohio Administrative Code (OAC) 4901:1-40.

4901:1-40-05(A), OAC:

Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, 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. Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.

4901:1-40-05(C), OAC:

Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.

## **II. Company Filing Summarized**

The Company's filing indicates that it did not conduct retail electricity sales in Ohio during 2009.<sup>1</sup>

## **III. Filed Comments**

The Ohio Environmental Council (OEC) filed a motion to intervene in this case. The OEC also submitted comments and amended comments. The initial comments submitted by the OEC focused on a perceived lack of justification for a *force majeure* determination related to the solar requirements. The OEC's amended comments acknowledged the *force majeure* determination issued by the Commission in Case No. 10-0428-EL-ACP.<sup>2</sup> The OEC objected to what it characterizes as a blanket *force majeure* determination, instead arguing that each such determination should be considered on an individual company basis. The Retail Electric Supply Association (RESA) filed reply comments citing the Commission's decision in Case No. 10-0428-EL-ACP and further indicating support for blanket orders where appropriate.

## **IV. Staff Findings**

Following its review of the annual status report and any timely comments submitted in this proceeding, Staff makes the following findings:

- (1) Direct Energy Services, LLC is an electric services company in Ohio.
- (2) Direct Energy Services, LLC submitted its annual status report for 2009 compliance activities on April 15, 2010.
- (3) Staff independently verified Direct Energy Services' claim that it did not conduct retail electric sales in Ohio during 2009.

---

<sup>1</sup> P. 1 of Company filing

<sup>2</sup> Staff notes that Direct Energy Services, LLC is not among the RESA CRES providers listed on p. 1 of the application in Case No. 10-0428-EL-ACP. However, as Direct Energy Services LLC did not have a compliance obligation in 2009, it need not be included within the scope of the Commission's *force majeure* determination.

- (4) OAC Section 4901:1-40-02, Purpose and Scope, indicates the following:

Parties affected by these alternative energy portfolio standard rules include all Ohio electric utilities and all electric services companies serving retail electric customers in Ohio. Any entities that do not serve Ohio retail electric customers shall not be required to comply with the terms of the alternative energy portfolio standard.

- (5) Staff finds that Direct Energy Services, LLC did not serve Ohio retail electric customers in 2009 and therefore did not have a compliance obligation in 2009.

## **V. Staff Recommendations**

Following its review of the information submitted in this proceeding, Staff recommends the following:

- (1) The filing of Direct Energy Services, LLC in this proceeding be accepted, with no further steps required.

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/25/2011 10:37:03 AM**

**in**

**Case No(s). 10-0498-EL-ACP**

Summary: Staff Review and Recommendation In the Matter of the Alternative Energy Resources Report for Calendar Year 2009 From Direct Energy Services, LLC electronically filed by Mr. Stuart M Siegfried on behalf of PUCO Staff