

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) Direct Energy Services, LLC (DES) is an electric services company as defined in Section 4928.01(A)(9), Revised Code.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric services companies to acquire a portion of their electricity supply for retail customers in Ohio from renewable energy resources. Specifically, the statute requires that, for 2009, a portion of the electricity sold by means of retail electric sales in Ohio must come from alternative energy resources, including 0.004 percent from solar energy resources (SER), half of which must be met with resources located within Ohio. This requirement increases to 0.010 percent for 2010.
- (3) Rule 4901:1-40-05(A), Ohio Administrative Code (O.A.C.), requires that, unless otherwise ordered by the Commission, each electric services company file by April 15 of each year an annual alternative energy portfolio status report. The report must analyze all activities the company undertook in the previous year in order to demonstrate how pertinent alternative energy portfolio benchmarks and planning requirements have been or will be met. Additionally, Commission Staff must conduct an annual compliance review with regard to the benchmarks. Finally, Rule 4901:1-40-02(A), O.A.C., provides that electric services companies that do not serve Ohio retail electric customers are not required to comply with the terms of the alternative energy portfolio benchmarks.
- (4) On April 15, 2010, DES filed its 2009 alternative energy resources report pursuant to Sections 4928.64 and 4928.65, Revised Code, and Rules 4901:1-40-03 and 4901:1-40-05, O.A.C. In its report, DES indicates that, during 2009, it did not conduct retail sales of generation service to customers who utilized the generation in a load center located within the state of Ohio.

- (5) On May 13, 2010, the Ohio Environmental Council (OEC) moved to intervene in the matter on the basis that it possesses a real and substantial interest in the proceeding. No party opposed the motion to intervene. The Commission finds that the motion to intervene is reasonable and should be granted. On May 17, 2010, OEC filed comments on the matter, arguing that DES has not demonstrated through its annual status report sufficient grounds for a Commission granted *force majeure* determination. Shortly thereafter, on May 18, 2010, OEC filed amended comments acknowledging that its recommendation that the Commission deny DES' *force majeure* application was moot because the Commission had already granted a *force majeure* waiver to certain Retail Electric Supply Association (RESA) competitive retail electric service (CRES) providers in Case No. 10-428-EL-ACP (10-428). Nevertheless, OEC reasserts its contention that the Commission should not approve *force majeure* applications that do not fully explain specific grounds for such a determination. Subsequently, on May 21, 2010, RESA filed a reply to OEC's comments, asserting that the *force majeure* determination in 10-428 was warranted.
- (6) On January 25, 2011, Staff filed findings and recommendations on the matter. Initially, Staff notes that DES was not among the RESA CRES providers applying for a *force majeure* determination in 10-428, and, consequently, was not within the scope of the Commission's *force majeure* determination. Additionally, Staff represents that it has independently verified DES' claim that it did not conduct retail electric generation sales in Ohio during 2009. Staff concludes that, consequently, DES had no compliance obligation in 2009. Staff recommends that DES' filing be accepted and that no further steps be required.
- (7) Upon review of DES' alternative energy resources report and Staff's findings and recommendations, the Commission finds that DES had no compliance obligation with respect to the alternative energy portfolio standards in 2009, as it did not conduct retail electric sales in Ohio during 2009, and that DES' 2009 alternative energy resources report should be accepted.

It is, therefore,

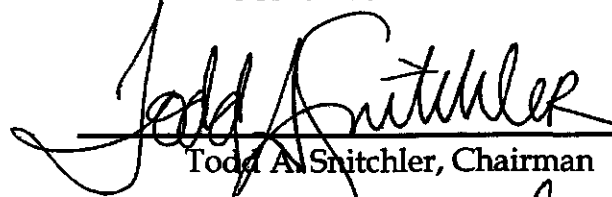
ORDERED, That the motion to intervene filed by OEC be granted. It is, further,

ORDERED, That DES' 2009 alternative energy resources report be accepted in accordance with finding (7). It is, further,

ORDERED, That this case be closed of record. It is, further,

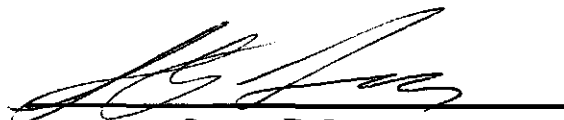
ORDERED, That a copy of this finding and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Valerie A. Lemmie

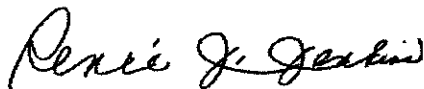

Steven D. Lesser


Cheryl L. Roberto

MLW/sc

Entered in the Journal

MAR 23 2011



Renee J. Jenkins
Secretary