

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Alternative Energy )  
Resources Report for Calendar Year 2009 ) Case No. 10-0497-EL-ACP  
From Direct Energy Business, LLC )**

**In the Matter of the Alternative Energy )  
Resources Report for Calendar Year 2010 ) Case No. 11-2469-EL-ACP  
From Direct Energy Business, LLC )**

**In the Matter of the Alternative Energy )  
Resources Report for Calendar Year 2011 ) Case No. 12-1232-EL-ACP  
From Direct Energy Business, LLC )**

**In the Matter of the Alternative Energy )  
Resources Report for Calendar Year 2012 ) Case No. 13-0890-EL-ACP  
From Direct Energy Business, LLC )**

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Findings and Recommendations of the PUCO Staff

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**I. Statutory Background**

Senate Bill 221, with an effective date of July 31, 2008, established Ohio's alternative energy portfolio standard (AEPS) applicable to electric distribution utilities and electric service 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 - 2012** are as follows:

<b>Year</b>	<b>Renewable Resources (including solar)</b>	<b>Solar Resources</b>
2009	0.25%	0.004%
2010	0.50%	0.010%
2011	1.00%	0.030%
2012	1.50%	0.060%

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.

The findings and recommendations in this document pertain to the company's compliance status. This document does not address such matters as cost recovery or status relative to the statutory 3% cost provision.

## **II. Company Filings Summarized**

Direct Energy Business, LLC (Direct Energy or Company) filed its AEPS compliance status report for the 2009 compliance year, along with a Motion for Protective Order, on April 15, 2010. In its report, the Company proposed a compliance baseline comprised of an average of its Ohio retail electric sales from 2006, 2007, and 2008. Applying the statutory benchmarks to its proposed baseline of 380,835 megawatt-hours (MWHs), the Company calculated its 2009 compliance obligations to be 15 solar MWHs and 937 non-solar MWHs. The Company asserted in its filing that it had not satisfied its solar obligation, and that it was awaiting a ruling on its *force majeure* request in Case No. 10-0428-EL-ACP.<sup>1</sup> With respect to its non-solar<sup>2</sup> renewable requirements, the Company indicated that it satisfied its total requirement of 937 MWHs but

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<sup>1</sup> The Commission granted the request for *force majeure* on April 28, 2010

<sup>2</sup> Staff uses "non-solar" in this context to refer to the total renewable requirement net of the specific solar carve-out. Staff acknowledges that there is not a specific "non-solar" requirement in the applicable statute.

was unable to secure the necessary in-state non-solar resources. With its filing, the Company sought permission to use out-of-state RECs to satisfy the in-state minimum.

Direct Energy filed its AEPS compliance status report for the 2010 compliance year, along with a Motion for Protective Order, on April 15, 2011. In its report, the Company proposed a compliance baseline comprised of an average of its Ohio retail electric sales from 2007, 2008, and 2009. Applying the statutory benchmarks to its proposed baseline, the Company calculated its 2010 compliance obligations the details of which are included in the unredacted version of its compliance report. With respect to its solar obligations, the Company asserted in its filing that it had applied for a *force majeure* ruling.<sup>3</sup> The Company indicated that it had retired sufficient renewable energy credits (RECs) through its PJM EIS Generation Attribute Tracking System (GATS) account to satisfy its non-solar requirements.

Direct Energy filed its AEPS compliance status report for the 2011 compliance year, along with a Motion for Protective Order, on April 13, 2012. In its report, the Company proposed a compliance baseline comprised of an average of its Ohio retail electric sales from 2008, 2009, and 2010. Applying the statutory benchmarks to its proposed baseline, the Company calculated its 2011 compliance obligations the details of which are included in the unredacted version of its compliance report. Included within the calculated solar obligations were the solar deficiencies from the 2009 and 2010 compliance years for which Direct Energy was granted *force majeure*. The Company asserted in its filing that it fully satisfied its 2011 compliance obligations, including the adjusted solar requirements.

Direct Energy filed its AEPS compliance status report for the 2012 compliance year, along with a Motion for Protective Order, on April 12, 2013. In its report, the Company proposed a compliance baseline comprised of an average of its Ohio retail electric sales from 2009, 2010, and 2011. Applying the statutory benchmarks to its proposed baseline of 622,206 megawatt-hours (MWHs), the Company calculated its 2012 compliance obligations the details of which are included in the unredacted version of its compliance report. Direct Energy indicated that it obtained, and retired through GATS, the necessary quantity of RECs and solar RECs (S-RECs) to satisfy its 2012 compliance obligations.

### **III. Filed Comments**

No persons filed comments in these proceeding addressing the respective compliance status reports.

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<sup>3</sup> Case No. 11-2447-EL-ACP

#### IV. Staff Findings

Following its review of the annual status reports and any timely comments submitted in these proceedings, Staff makes the following findings:

- (1) That Direct Energy is an electric services company in Ohio certified to provide power marketer services.
- (2) That Direct Energy had retail electric sales in the state of Ohio during 2009, 2010, 2011, and 2012, and therefore Direct Energy had AEPS compliance obligations for each of these years.
- (3) That the compliance baselines proposed by Direct Energy for each of the four compliance years are reasonable.
- (4) That Direct Energy accurately calculated its compliance obligations for each of the four compliance years.
- (5) That the Company has transferred RECs and S-RECs to its GATS reserve subaccount to demonstrate compliance with its 2009 – 2012 AEPS compliance obligations.
- (6) That the Company was granted *force majeure* determinations involving its 2009 and 2010 solar obligations. When granting the determinations, the Commission ordered that the solar deficiencies be added to the Company's 2011 solar obligations.
- (7) That Direct Energy fully addressed its previous solar deficiencies through the retirement of additional S-RECs for its 2011 compliance requirements.
- (8) That for the 2009 compliance year, Direct Energy had a total non-solar obligation of 937 MWHs of which at least 469 MWHs should have originated from Ohio facilities. For 2009, Direct Energy retired 937 RECs all of which were from out-of-state facilities. The Company, citing a constrained supply for Ohio RECs, requested permission to use exclusively out-of-state RECs in that instance.
- (9) That when evaluating the RECs transferred to the Company's GATS reserve subaccount for 2011 compliance, Staff notes that the Company retired more Ohio RECs than was necessary to satisfy the 50% in-state minimum. The excess in-state RECs retired by Direct Energy for 2011 more than offset the 469 Ohio RECs that should have been retired for 2009. Therefore, Staff finds that no additional

steps are necessary to address the Company's 2009 non-solar compliance performance.

- (10) That when evaluating Direct Energy's GATS reserve subaccounts for the 2009 – 2012 period, Staff finds that in the aggregate the Company satisfied its non-solar obligations, including the in-state minimums, as well as its total and in-state solar obligations.

## **V. Staff Recommendations**

Following its review of the information submitted in these proceedings and other relevant data, Staff recommends the following:

- (1) That Direct Energy Business, LLC be found to have satisfied its AEPS compliance obligations for 2009, 2010, 2011, and 2012.
- (2) That for future compliance years in which the Company is utilizing GATS to demonstrate its Ohio compliance efforts, the Company initiates the transfer of the appropriate RECs and S-RECs to its GATS reserve subaccount between March 1<sup>st</sup> and April 15<sup>th</sup> so as to precede the filing of their Ohio annual compliance status report with the Commission.

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Summary: Staff Review and Recommendation for compliance years 2009 - 2012 electronically filed by Mr. Stuart M Siegfried on behalf of PUCO Staff