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

REPLY COMMENTS OF 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 regarding whether, due to recent enactment of Substitute Senate Bill 310 ("Sub.S.B. 310"), the Public Utilities Commission of Ohio ("Commission") should eliminate or prorate the 2014 in-state renewable energy resource portion of compliance with the 2014 renewable energy resource mandates. In its Initial Comments, Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, "Direct Energy") encouraged the Commission to find that the changes to Ohio law from Sub.S.B. 310 eliminate the in-state requirement in its entirety for 2014. All other commenters except for the Sierra Club, Ohio Environmental Council ("OEC"), and SRECTrade, Inc. ("SRECTrade") urged the Commission to find the General Assembly eliminated the in-state requirement in its entirety for all of 2014 and beyond. The Commission should reject the reasons cited by Sierra Club, OEC, and SRECTrade to keep the in-state mandate for 2014 in the Commission's rules.

II. REPLY 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] 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" effective on December 31, 2014 ("by end of year") will be that enacted under Sub.S.B. 310. The "most recent applicable benchmark" that will occur "by end of year" 2014 does not contain any mandate for any portion of any year.

Notably, Sierra Club, OEC, or SRECTrade fail to take on this plain language directly. Instead Sierra Club and OEC argue the Commission should take no action because there is no statutory directive in Sub.S.B. 310 to eliminate or prorate the in-state requirement for 2014.[2] Sierra Club and SRECTRade also worry that any such action might discourage current or near-term investment in Ohio facilities that might create or maintain jobs. The Commission should reject these arguments.

First, there is no statutory directive in Sub.S.B. 310 because the plain language (as described above) obviated any need to include such a directive. There was no need to explicitly direct the Commission (either way) because the plain language of "most recent applicable benchmark" and "by end of year" stand on their own and there was no further clarification or directive needed. Sierra Club also highlights brand new language in R.C. Chapter 4928 where

[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).
[2] Sierra Club Initial Comments at 2-3; OEC Initial Comments at 4-5.

the General Assembly included explicit directives for the Commission to take action and points to the fact that there is no similar directive as it relates to the in-state requirement. This argument should similarly be rejected. The in-state language was well-known existing law and striking previous language is a much different ballgame than entirely new language put into Ohio law and therefore the lack of a directive from the General Assembly is a red herring. Finally, Sierra Club argues any change to the in-state mandate should be prospective beginning in 2015 inasmuch as most entities who must comply with the renewable energy mandates have already procured in-state renewables for 2014 compliance. The Commission should reject this rationale inasmuch as compliance with the law as previously written would also be in compliance with the newly enacted law. However, that would be an EDU or CRES provider's option or choice; it should not be mandated by the Commission when that path is contrary to the plain language of Sub.S.B. 310.

The Commission should also reject Sierra Club's and SRECTrade's speculative rationale that removing or prorating the in-state requirement for 2014 would discourage investment and job creation.[3] Sierra Club and SRECTrade provide no data or arguments that keeping the in-state mandates will actually encourage or maintain investments. Further, Sierra Club opines that eliminating or prorating the 2014 in-state requirement would amount to retroactive lawmaking. Sierra Club and SRECTrade also point to the fact that the in-state language was not removed from the law. Direct Energy agrees that in-state RECs remain an ***option*** for compliance in any year; however the General assembly removed any in-state ***requirement*** for 2014 and beyond and the Commission should recognize as much in its rules and decisions about 2014 compliance by EDUs and CRES providers.

[3] Sierra Club Initial Comments at 3-4; SRECTrade Initial Comments at 1.

The Commission should similarly reject Sierra Club's unsupported request for more "due process proceedings" as it relates to the rules.[4] Sierra Club provides no specific suggestions as to what "due process proceedings" would entail or why additional process around this particular rulemaking is required beyond the ordinary initial and reply comment period that is being provided for stakeholders in this current process.

Finally, SRECTrade alludes to the Commission reinstating the in-state mandate after a 2014-2016 RPS freeze.[5] The General Assembly removed the in-state mandate for all of 2014 and going forward. The Commission possesses no authority to reinstate the mandate unless and until the General Assembly reinserts another in-state mandate. The default or status quo is complete elimination of the in-state mandate and an affirmative re-insertion of the mandate by the Commission after the 2014-2016 RPS freeze would be unlawful without subsequent legislative action.

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 for all of 2014.

Respectfully submitted,

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[4] Sierra Club Initial Comments at 4.
[5] SRECTrade Initial Comments at 1-2.

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 *Reply 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 12th day of August 2014 via e-mail, except those specifically designated as being served via U.S. Mail.

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