

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy )  
Portfolio Status Report for 2009 of Direct ) Case No. 10-497-EL-ACP  
Energy Business, LLC. )  
)  
In the Matter of the Alternative Energy )  
Portfolio Status Report for 2010 of Direct ) Case No. 11-2469-EL-ACP  
Energy Business, LLC. )  
)  
In the Matter of the Alternative Energy )  
Portfolio Status Report for 2011 of Direct ) Case No. 12-1232-EL-ACP  
Energy Business, LLC. )  
)  
In the Matter of the Alternative Energy )  
Portfolio Status Report for 2012 of Direct ) Case No. 13-0890-EL-ACP  
Energy Business, LLC. )

FINDING AND ORDER

The Commission finds:

- (1) Direct Energy Business, LLC. (DEB or Company) is an electric services company as defined in R.C. 4928.01(A)(9) and, as such, is subject to the jurisdiction of this Commission.
- (2) R.C. 4928.64(B)(2) establishes benchmarks for electric services companies to acquire a portion of their electricity supply for retail customers in Ohio from renewable energy resources. Half of the renewable benchmark must be met with resources located within Ohio (in-state renewable benchmark), including a portion from solar energy resources (solar benchmark), half of which must be met with resources located within Ohio (in-state solar benchmark).<sup>1</sup> The specific renewable compliance obligations for 2009 through 2012 are as follows:

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<sup>1</sup> The Commission notes that, for future reports, Sub.S.B. No. 310 of the 130th General Assembly, which became effective September 12, 2014, has amended R.C. 4928.64 and 4928.65 to, inter alia, eliminate the in-state renewable benchmarks and advanced energy component, freeze renewable energy benchmarks for 2015 and 2016, and allow an alternative sales baseline calculation for determining compliance.

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

R.C. 4928.645 (formerly R.C. 4928.65 prior to the enactment of 2014 Sub.S.B. No. 310), provides that an electric utility or electric services company may use renewable energy credits (RECs) and solar energy credits (SRECs) to meet its respective renewable energy and solar benchmarks. Ohio Adm.Code 4901:1-40-01(BB) defines a REC as the environmental attributes associated with one MWh of electricity generated by a renewable energy resource, except for electricity generated by facilities as described in Ohio Adm.Code 4901:1-40-04(E).

- (3) Ohio Adm.Code 4901:1-40-05(A) requires each electric services company to annually file by April 15 an annual alternative energy portfolio status report (AEPS report), unless otherwise ordered by the Commission. The AEPS report must analyze all activities the company undertook in the previous year in order to demonstrate how pertinent alternative energy portfolio benchmarks have been met. Staff then conducts an annual compliance review with regard to the benchmarks. Ohio Adm.Code 4901:1-40-02(A) provides that any entity that does not serve Ohio retail electric customers shall not be required to comply with the AEPS rules.
- (4) In Case No. 10-497-EL-ACP, DEB filed its AEPS report for the 2009 compliance year with a motion for protective order on April 15, 2010, in which the Company proposed a compliance baseline using the 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 (MWh), the Company calculated its 2009 compliance obligations to be 15 solar MWh and 937 non-solar MWh. DEB reported that it had not satisfied its solar obligation, pending a ruling on its force majeure request in Case No. 10-428-EL-ACP that was subsequently granted.<sup>2</sup> With respect to its non-solar renewable

<sup>2</sup> On April 28, 2010, the Commission granted a request filed on behalf of the Retail Electric Supply Association, including DEB, for a force majeure waiver of 2009 SREC requirements in Case No. 10-428-EL-ACP. The order provided that any shortfall in 2009 SRECs should be included with the following period's compliance requirements.

requirements, the Company indicated that it satisfied its total requirement of 937 MWh but was unable to secure the necessary in-state non-solar resource, and requested permission to use out-of-state RECs to satisfy the in-state minimum.

- (5) In Case No. 11-2469-EL-ACP, DEB filed its 2010 AEPS report and motion for protective order on April 15, 2011 using a compliance baseline of its average Ohio retail electric sales from 2007, 2008, and 2009. Applying the statutory benchmarks to this baseline and its pending force majeure request,<sup>3</sup> the Company calculated that it had met its 2010 compliance obligations, including solar, and had retired sufficient RECs through its PJM EIS Generation Attribute Tracking System (GATS) account to satisfy its non-solar requirements.
- (6) In Case No. 12-1232-EL-ACP, DEB filed its 2011 AEPS report and motion for protective order on April 13, 2012. Using the average of its Ohio retail electric sales from 2008, 2009, and 2010, the statutory benchmarks, to including the solar deficiencies from the 2009 and 2010 compliance years for which DEB was granted force majeure, the Company reported that it satisfied its 2011 compliance obligations.
- (7) In Case No. 13-890-EL-ACP, DEB filed its 2012 AEPS report and motion for protective order on April 12, 2013, stating that the Company had satisfied its 2012 compliance obligations.
- (8) The only motions to intervene and comments regarding the Company's reports in any of the four proceedings were filed by the Ohio Environmental Council (OEC), which sought to intervene in Case No. 10-497-EL-ACP on May 13, 2010, and filed comments on May 18, 2010, cautioning against the granting of a blanket request for force majeure; and a reply to OEC's concerns filed by the Retail Electric Supply Association on May 21, 2010 in Case No. 10-497-EL-ACP, supporting a blanket declaration of force majeure due to the limited number of certified solar generators to meet SREC requirements. As no

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<sup>3</sup> On August 3, 2011, the Commission granted DEB's request for a force majeure waiver in Case No. 11-2447-EL-ACP, and ordered that DEB's SER benchmark for 2011 be increased to include the Company's SREC shortfalls in 2009 and 2010.

objection has been raised to OEC's motion for intervention in Case No. 10-497-EL-ACP, it will be granted.

- (9) With respect to the motions for protective order filed by DEB in all four proceedings, we first note that an entry was issued on January 5, 2011 in Case No. 10-497-EL-ACP granting protection of the redacted information from public disclosure for a period of 18 months, and DEB has not timely filed a motion to renew confidential treatment. Furthermore, the alleged confidential materials filed in the other three proceedings have been afforded confidential treatment for at least 18 months from the date of filing. In addition, this Commission has established in other cases, that motions for protective orders with respect to AEPS reports should be granted for projected data, but denied for any current or historical data that has been publicly disclosed, such as a company's historical intrastate sales or REC requirements that are a mathematical function of publicly-reported sales. *See, e.g., Direct Energy Services, LLC, Case No. 12-1233-EL-ACP, Finding and Order (December 11, 2013) at 5-6.* Accordingly, we will deny the pending motions for protective orders in Case Nos. 11-2469-EL-ACP, 12-1232-EL-ACP, and 13-890-EL-ACP, but provide DEB the opportunity to renew its request for protective treatment of historical data within 30 days of the issuance of this order. If no motion is filed by the Company by such date, the Docketing Division shall release all confidential materials in each case.
- (10) On July 8, 2014, Staff filed its review and recommendations of the Company's AEPS reports filed in each of the four captioned cases. Staff reports that DEB had jurisdictional retail electric sales during 2009, 2010, 2011, and 2012, and therefore had AEPS compliance obligations for each year. Further, Staff found that the Company's compliance baseline for each period was reasonable, and that DEB had accurately calculated its compliance obligations for each report, including its accounting for the force majeure determinations noted above involving its 2009 and 2010 solar obligations. In addition, Staff verified that DEB has, in the aggregate, appropriately transferred RECs and S-RECs to its GATS reserve subaccount to demonstrate compliance with its AEPS compliance obligations for 2009 through 2012. Therefore, Staff recommends that DEB be found to be in compliance with its renewable energy compliance obligations for the four reporting periods. Finally, Staff

recommends that for future compliance years in which the Company utilizes GATS to demonstrate its Ohio compliance efforts, DEB initiate the transfer of the appropriate RECs and SRECs to its GATS reserve subaccount between March 1 and April 15 so as to precede the filing of its annual AEPS report with the Commission.

- (11) Upon review of the Company's AEPS reports, as well as Staff's findings and recommendations, the Commission adopts Staff's recommendations and finds that DEB has complied with all AEPS obligations for 2009 through 2012. Further, the Company is directed to comply with Staff's recommendations noted above.

It is, therefore,

ORDERED, That OEC's motion for intervention in Case No. 10-497-EL-ACP be granted. It is, further,

ORDERED, That the Company's AEPS reports for 2009 through 2012 be accepted as set forth above, as the Company has complied with its AEPS obligations the four-year period. It is, further,

ORDERED, That the Company comply with Staff's recommendations as adopted herein. It is, further,

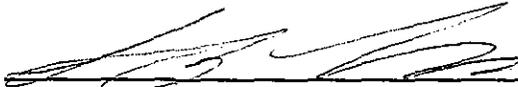
ORDERED, That the Company's pending motions for protective orders in Case Nos. 11-2469-EL-ACP, 12-1232-EL-ACP, and 13-890-EL-ACP be denied. It is, further,

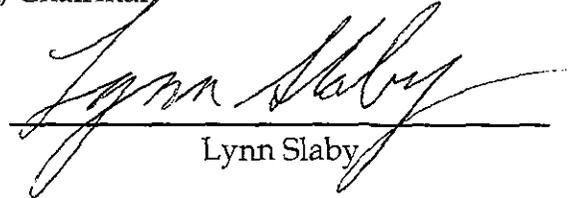
ORDERED, That the Docketing Division release all confidential materials in each case after 30 days from the issuance of this order, if the Company has not filed a new motion for protective order by such date. It is, further,

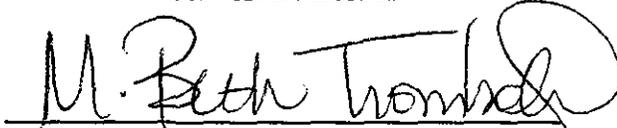
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Thomas W. Johnson, Chairman

  
Steven D. Lesser

  
Lynn Slaby

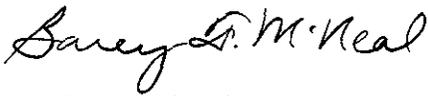
  
M. Beth Trombold

  
Asim Z. Haque

RMB/dah

Entered in the Journal

**APR 02 2015**



Barcy F. McNeal  
Secretary