

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Duke Energy Retail Sales,)
LLC's Annual Alternative Energy Portfolio) Case No. 10-508-EL-ACP
Status Report.)

In the Matter of Duke Energy Retail Sales,)
LLC's Request for Force Majeure) Case No. 10-509-EL-ACP
Determination.)

SECOND FINDING AND ORDER

The Commission finds:

- (1) Duke Energy Retail Sales, LLC (DERS) 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 increased 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, DERS filed its 2009 alternative energy portfolio status report pursuant to Section 4928.64, Revised Code, and Rule 4901:1-40-05(A), O.A.C. In its report, DERS states that it did not have any retail electric sales in Ohio from 2006 through 2008 but that it did have such sales in 2009. For that reason, DERS proposes a baseline of 934,540 MWh based on its projected sales volumes for 2009 rather than historical sales data. DERS states that its proposed approach is consistent with Rule 4901:1-40-03(B)(2)(b), O.A.C., which provides that, for an electric services company with no retail electric sales in the state during the preceding three calendar years, its initial baseline shall consist of a reasonable projection of its retail electric sales in the state for a full calendar year.

Using its proposed baseline and the 2009 statutory benchmarks, DERS computes its compliance obligation for 2009 as 2,299 non-solar MWh, with at least 1,150 MWh from in-state resources, and 38 solar MWh, with at least 19 MWh from in-state resources. DERS states that it fully satisfied the non-solar portion of its 2009 compliance obligation. DERS requests that the Commission direct it to move the necessary renewable energy credits (RECs) into its Generation Attribute Tracking System (GATS) reservation account in order to retire permanently the RECs used to meet its 2009 non-solar obligation.

With respect to its solar obligation, DERS indicates that it did not obtain any solar renewable energy credits (SRECs) and that it fell short of meeting its 2009 SER benchmark by 38 SRECs. Therefore, DERS sought a *force majeure* determination, pursuant to Section 4928.64(C)(4), Revised Code, regarding its 2009 SER benchmark.

- (5) Motions to intervene were filed by the Ohio Environmental Council (OEC) and the Environmental Law and Policy Center (ELPC). These motions were granted by the Commission on February 23, 2011.

- (6) On May 17, 2010, OEC and ELPC filed comments regarding DERS' request for a *force majeure* determination. OEC and ELPC also noted that DERS should not limit itself to the purchase of RECs but should also consider its own generation of renewable power in the event the market for RECs stagnates.
- (7) In a finding and order issued February 23, 2011, the Commission granted DERS' request for a *force majeure* determination, contingent upon DERS meeting its revised 2010 SER benchmark, which the Commission increased to include the shortfall for the 2009 SER benchmark.
- (8) On March 21, 2011, Staff filed findings and recommendations on DERS' alternative energy portfolio status report. Initially, Staff finds that DERS was required to comply with the terms of the alternative energy portfolio benchmarks for 2009, as it had retail electric sales in Ohio. Additionally, Staff finds that DERS' proposed baseline is not unreasonable and that DERS accurately computed its compliance obligations for 2009.

Staff states that it requested and received information on the non-solar RECs that DERS proposed to use to satisfy its non-solar compliance obligation. The information indicates that DERS satisfied both its total non-solar obligation, as well as the specific in-state non-solar requirement, for 2009. The information further shows that these non-solar RECs originated from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2009. Staff notes that DERS awaits direction as to how it should formally surrender or retire these particular non-solar RECs.

With respect to DERS' solar compliance obligation, Staff finds that DERS did not secure or generate any SRECs for 2009. Because the Commission granted DERS' request for a *force majeure* determination, Staff concludes that DERS satisfied its revised solar obligation for 2009.

Accordingly, Staff recommends that DERS be found to be in compliance with its 2009 non-solar compliance obligation and its revised solar obligation, specifically recommending that DERS' compliance efforts for 2010 should include an additional 38 SRECs, of which at least 19 SRECs should come from certified in-state facilities. Staff further recommends that DERS transfer the 1,150 in-state non-solar RECs and an additional 1,149 non-solar RECs, as described in the information provided to Staff, to DERS' GATS reserve subaccount for Ohio compliance purposes. Staff states that it will review and confirm the transfer.

- (9) Upon review of DERS' alternative energy portfolio status report, the comments of OEC and ELPC, and Staff's findings and recommendations, the Commission finds that DERS satisfied its non-solar compliance obligation and its revised solar obligation for 2009 and that DERS' alternative energy portfolio status report for 2009 should be accepted. Additionally, consistent with our approval of DERS' request for a *force majeure* determination on February 23, 2011, we find that DERS' solar compliance obligation for 2010 should be increased to include an additional 38 SRECs, of which at least 19 SRECs should come from certified in-state facilities. Finally, we find that DERS should transfer the 1,150 in-state non-solar RECs and an additional 1,149 non-solar RECs, as described in the information provided to Staff, to DERS' GATS reserve subaccount for Ohio compliance purposes and that Staff should review and confirm the transfer of the RECs.

It is, therefore,

ORDERED, That DERS' alternative energy portfolio status report for 2009 be accepted in accordance with finding (9). It is, further,

ORDERED, That DERS' solar compliance obligation for 2010 be increased to include an additional 38 SRECs, of which at least 19 SRECs come from certified in-state facilities in accordance with finding (9). It is, further,

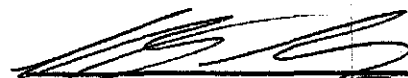
ORDERED, That DERS transfer the necessary RECs to its GATS reserve subaccount and that Staff review and confirm the transfer in accordance with finding (9). It is, further,

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


THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella

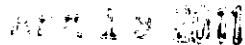

Steven D. Lesser

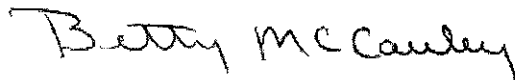

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Betty McCauley
Secretary