

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy     )  
Portfolio Status Report of Dominion     ) Case No. 11-2470-EL-ACP  
Retail, Inc.     )

FINDING AND ORDER

The Commission finds:

- (1) Dominion Retail, Inc. (Dominion Retail) 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 2010, a portion of the electricity sold by means of retail electric sales in Ohio must come from alternative energy resources (overall renewable energy resources benchmark), including 0.010 percent from solar energy resources (overall solar energy resources (SER) benchmark), half of which must be met with resources located within Ohio (in-state SER benchmark). This requirement increased to 0.030 percent for 2011.
- (3) Additionally, Section 4928.64(C)(4), Revised Code, authorizes the Commission to determine whether an insufficient quantity of renewable energy resources was reasonably available in the market to facilitate an electric service company's compliance with the statutory benchmarks. The statute further provides that the Commission shall consider the electric service company's good faith effort to acquire sufficient renewable energy resources to comply with the benchmark and the availability of renewable energy resources in Ohio or other jurisdictions within the PJM Interconnection, LLC (PJM) and the Midwest Independent Transmission System Operator (MISO).
- (4) On April 15, 2011, Dominion Retail filed its 2010 alternative energy portfolio status report. In its report, Dominion Retail requests that the Commission make a *force majeure* determination pursuant to Section 4928.64(C)(4), Revised Code,

regarding Dominion Retail's compliance with its SER benchmark for 2010. Specifically, Dominion Retail requests that the Commission make a *force majeure* determination to reduce Dominion Retail's 2010 SER benchmark to the amount of solar renewable energy credits (SRECs) actually acquired by Dominion Retail.

In its application, Dominion Retail asserts that it was unable to obtain the SRECs necessary to comply with its 2010 in-state SER benchmark. Dominion Retail reasons that its business model, coupled with market and regulatory uncertainties, requires that Dominion Retail maintain a high degree of flexibility in its supply arrangements. Further, Dominion Retail states that it made a good faith effort to acquire in-state SRECs in 2010, but was advised by the area's leading REC broker that there were no in-state SRECs available at any price.

- (5) By entry issued May 9, 2011, the attorney examiner established a procedural schedule pursuant to Rule 4901:1-40-06(A), Ohio Administrative Code (O.A.C.), setting June 6, 2011, as the deadline for the filing of initial comments on the Companies' application and June 20, 2011, as the deadline for reply comments. Thereafter, in light of the attorney examiner's extension of the comment period upon Staff's motion in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for a Force Majeure Determination*, Case No. 11-2479-EL-ACP (11-2479), the attorney examiner *sua sponte* extended the deadline for comments in the above-captioned case to June 27, 2011, for initial comments, and July 11, 2011, for reply comments.
- (6) On June 27, 2011, Staff filed comments regarding Dominion Retail's request for a *force majeure* determination. Staff remarks that a party seeking a *force majeure* determination under Rule 4901:1-40-06, O.A.C., must show that it pursued all reasonable compliance options including, but not limited to, REC solicitations, REC banking, and long-term contracts. Further, Staff notes that the filing must also include an assessment of the availability of qualified in-state resources, as well as qualified resources within the territories of PJM and MISO.

Staff comments that Dominion Retail indicates it contacted a single REC broker, but also notes that Dominion Retail's filing does not indicate whether it pursued any other compliance options, including those specifically enumerated in the rule. Further, Staff opines that Dominion Retail's perceived need for flexibility would not preclude consideration of certain compliance options given the ability to bank or sell any excess RECs or SRECs. Staff concludes that, based on the information provided, Staff cannot confirm that Dominion Retail satisfied the requirements in Rule 4901:1-40-06(A)(1), O.A.C., to support a *force majeure* determination.

- (7) On July 11, 2011, Dominion Retail filed reply comments objecting to Staff's conclusion and renewing its request for a *force majeure* determination. Dominion Retail explains that, under its business model, it focuses on the residential market, serves the majority of its customers pursuant to one-year contracts, does not impose an early termination fee on its residential customers with fixed-price contracts, and makes multiple offers over the course of a calendar year. Dominion Retail reiterates that it believes, in light of its business model, that the only reasonable compliance option available to it is to purchase RECs and SRECs. Further, Dominion Retail reiterates that it contacted the area's leading REC broker and was advised that there were no in-state SRECs available at any price.
- (8) Upon review of Dominion Retail's request for a *force majeure* determination, Staff's comments, and Dominion Retail's reply comments, the Commission finds that Dominion Retail's request should be granted. As noted above, Section 4928.64(C)(4), Revised Code, authorizes the Commission to determine whether an insufficient quantity of renewable energy resources was reasonably available in the market to facilitate an electric service company's compliance with the statutory benchmarks. Additionally, the statute further provides that the Commission shall consider the electric utility's good faith effort to acquire sufficient renewable energy resources in Ohio.

Here, Dominion Retail states that, in light of its business model, the only reasonable compliance option available to it is to purchase RECs and SRECs, and that it was advised by the

area's leading REC broker that there were no in-state SRECs available at any price. Initially, the Commission agrees with Staff's assessment that Dominion Retail's business model does not preclude pursuit of all of the options listed in Staff's comments. However, the Commission finds that Dominion Retail has presented evidence that an insufficient quantity of in-state 2010 SRECs was reasonably available in the market to facilitate Dominion Retail's compliance with its benchmark. As we have recognized in numerous proceedings today,<sup>1</sup> other electric utilities and electric services companies likewise experienced difficulties in meeting their in-state solar energy resources benchmarks for 2010. It is apparent that the market for in-state solar energy resources is still advancing to the point at which there will be sufficient in-state solar energy resources available for all electric utilities and electric services companies to be able to meet the statutory standard, which was merely in its second year of implementation in 2010. However, although we have found today that an adequate market for in-state SRECs did not exist in 2010, the Commission expects all electric utilities and electric service companies to fully comply with the statutory requirement to engage in good faith efforts to acquire sufficient solar energy resources as set forth in Section 4928.64(c)(4)(b), Revised Code.

- (9) The Commission finds that Dominion Retail has presented sufficient grounds for the Commission to reduce Dominion Retail's in-state 2010 SER benchmark to the level of SRECs acquired in 2010. Additionally, pursuant to Section 4928.64(C)(4)(c), Revised Code, our approval of Dominion Retail's application is contingent upon Dominion Retail meeting its revised 2011 SER benchmark, which shall be increased to include the shortfall for the 2010 SER benchmark.

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<sup>1</sup> *In the Matter of Direct Energy Business LLC for a Waiver from Meeting the 2010 Ohio Sited Solar Energy Resource Benchmarks*, Case No. 11-2447-EL-ACP, Finding and Order (August 3, 2011); *In the Matter of the Application by Noble Americas Energy Solutions LLC for a Waiver from 2010 Ohio Sited Solar Energy Resource Benchmarks*, Case No. 11-2384-EL-ACP, Finding and Order (August 3, 2011); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for a Force Majeure Determination for Their In-State Solar Resources Benchmark Pursuant to Section 4928.64(C)(4)(a), Revised Code*, Case No. 11-2479-EL-ACP, Finding and Order (August 3, 2011).

It is, therefore,

ORDERED, That Dominion Retail's request for a *force majeure* determination be granted in accordance with finding (9). It is, further,

ORDERED, That Dominion Retail's 2011 in-state SER benchmark be increased as set forth in finding (9). It is, further,

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

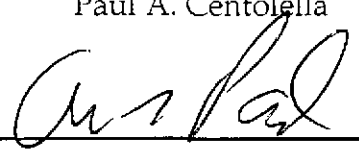
THE PUBLIC UTILITIES COMMISSION OF OHIO



Todd A. Snitchler, Chairman

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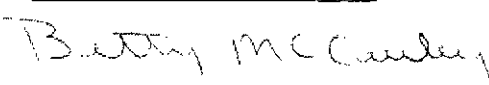
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Entered in the Journal

**AUG 03 2011**



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Betty McCauley  
Secretary