

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy )  
Portfolio Status Report of DPL Energy ) Case No. 10-492-EL-ACP  
Resources, Inc. )

FINDING AND ORDER

The Commission finds:

- (1) DPL Energy Resources, Inc. (DPLER) 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, in 2009, 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 0.004 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 0.010 percent for 2010 and 0.030 percent for 2011.
- (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. Further, Rule 4901:1-40-08(A), O.A.C., provides that electric services companies that fail to meet their applicable benchmarks are required to remit a compliance payment based on the amount of noncompliance in the absence of a *force majeure* determination.
- (4) On April 15, 2010, DPLER 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, DPLER proposes a baseline and computes its compliance obligations. DPLER indicates that it was unable to meet its 2009 SER benchmark. Consequently, DPLER sought a *force majeure* determination pursuant to Section 4928.64(C)(4), Revised Code, regarding its 2009 SER benchmark.

- (5) In a finding and order issued March 23, 2011, in Case No. 09-2006-EL-ACP, the Commission granted DPLER's request for a *force majeure* determination, contingent upon DPLER meeting its revised 2010 SER benchmark, which the Commission increased to include the shortfall for the 2009 SER benchmark.
- (6) On May 14, 2010, and May 17, 2010, respectively, the Environmental Law and Policy Center (ELPC) and the Ohio Environmental Council (OEC) filed motions to intervene in this proceeding. No party filed memoranda contras to the motions to intervene. The Commission finds that the motions to intervene are reasonable and should be granted.

Additionally, ELPC subsequently filed a motion for admission *pro hac vice* of Robert Kelter. The Commission finds that this motion is reasonable and should be granted.

- (7) On May 17, 2010, ELPC and OEC filed joint comments contending that DPLER should provide supplemental information in its report including (a) an explanation pursuant to Rule 4901:1-40-05(A)(3), O.A.C., for DPLER's undercompliance with its in-state SER benchmark, should the Commission deny the *force majeure* application; (b) the technological and geographical source of the potential overcompliance DPLER indicates for its overall REC benchmark and overall SER benchmark; (c) the number of RECs DPLER will apply to its 2010 benchmark; (d) whether there are pending renewable energy certification applications that DPLER may rely on; (e) if there are pending certification applications that DPLER may rely on, the applicants, the number of RECs subject to certification, and the Commission case numbers; (f) the terms on which DPLER's affiliate, Dayton Power & Light (DP&L), allocates RECs to DPLER, including the terms of any purchase, the cost recovery each company uses for allocated RECs, and the contingency plan DPLER may use should DP&L cease REC allocation; and (g) the procedures and

safeguards DP&L and DPLER use to ensure that DP&L is not counting RECs allocated to DPLER.

- (8) On May 27, 2010, DPLER filed comments in reply to ELPC's and OEC's joint comments. In its reply, DPLER initially states that its 2009 report was complete and in full compliance with Commission regulations. Specifically, in response to ELPC's and OEC's comment (a), DPLER responds that DPLER provided sufficient information regarding resource shortages under Rule 4901:1-40-05(A)(3), O.A.C., to allow the Commission to evaluate the *force majeure* application. In response to comment (b), DPLER responds that ELPC and OEC seek confidential data that is market sensitive and that ELPC and OEC have no legitimate need for this information. DPLER does disclose, however, the states from which it acquired RECs and what the geographical sources included. As to comment (c), DPLER responds that this information appears on page 3 of DPLER's status report, which provides that its unadjusted 2009 benchmark is 66 in-state SRECs and that it only obtained 9, causing a shortfall in 2009 of 57 in-state SRECs, which should be carried over to its 2010 in-state SER benchmark. Regarding comments (d) and (e), DPLER responds that all of the RECs included in the report were from sources that had obtained Commission certification by the time of the filing.

As to comment (f), DPLER states that DP&L filed its renewable compliance plan in Case No. 08-1094-EL-SSO, which was approved by stipulation and provided that baseline sales computations would be made and DP&L would procure sufficient RECs to meet the renewable requirements for both DP&L and DPLER. Further, DPLER states that the costs accrued by both DP&L and DPLER are based on their annual REC requirements multiplied by the estimated weighted average REC cost, that DP&L will recover its allocated share of costs through its alternative energy rider, and that DPLER has no explicit recovery mechanism. DPLER also provides that a supply contract between DP&L and DPLER governs DP&L's requirement to procure RECs to meet DPLER's alternative energy obligations, and that a contingency plan is not necessary as that contract obligates DP&L to provide full requirements service. Finally, as to comment (g), DPLER replies that all RECs are recorded through GATS or M-RETs, giving each REC a unique identifier, and that, when RECs are retired, the unique

identifiers of the retired RECs allow an audit trail to be established that will ensure against double-counting.

- (9) On June 8, 2011, Staff filed its findings and recommendations on DPLER's alternative energy portfolio status report. Initially, Staff finds that DPLER was required to comply with the terms of the alternative energy portfolio benchmarks for 2009, as it engaged in retail electric sales in Ohio.

Additionally, Staff indicates that it reviewed DPLER's computations of its baseline and compliance obligations for 2009. Staff notes that the filing erroneously indicates that sales from 2007 to 2009 were used to compute the baseline, but that Staff confirms the sales figures are actually from 2006 to 2008, as is appropriate. Further, Staff finds that DPLER accurately computed its 2009 overall renewable energy resource benchmark, but that DPLER overstated its overall SER benchmark requirement by 1 SREC.

Staff further indicates that DPLER proposed to apply 108 megawatt-hours (MWhs) of renewable generation from its Killen facility<sup>1</sup> that were generated in 2009, but for which RECs were not created, toward its 2009 overall renewable energy resources benchmark and that Staff reviewed documentation from DPLER that substantiated this amount. Additionally, Staff notes that DP&L proposed in its filing to apply 383 MWhs from the Killen facility. Staff comments that these allocations of 22 percent to DPLER and 78 percent to DP&L are consistent with the companies' respective overall renewable energy resources benchmarks.

Staff reports that it requested and received details on the SRECs that DPLER used to satisfy its 2009 overall SER benchmark, and that DPLER secured 66 out-of-state SRECs and 9 in-state SRECs, thereby satisfying its adjusted 2009 SER benchmark consistent with the Commission's *force majeure* determination in Case No. 09-2006-EL-ACP. Additionally, Staff indicates that these SRECs originated from facilities certified by the Commission and involved electricity generated between August 1, 2008, and December 31, 2009. Staff further notes that,

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<sup>1</sup> The Killen facility was certified as an eligible Ohio renewable energy resource generating facility in *In the Matter of the Application of Killen Generating Station for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case Nos. 09-891-EL-REN, 09-892-EL-REN, Finding and Order (April 6, 2010).

as of the report, DPLER has not formally retired its RECs and SRECs for 2009 compliance purposes.

Staff indicates that the cost allocations inquiries raised by ELPC and OEC would be more appropriately reviewed during a cost-recovery proceeding such as with DP&L's AER. Further, Staff states that, while it is sensitive to the issue of double counting, Staff agrees with DPLER that the unique identifiers assigned to RECs and SRECs by attribute-tracking systems, when combined with reserve subaccount details, provide adequate documentation for auditing purposes.

- (10) As a result of its review, Staff recommends that DPLER be found to be in compliance with its 2009 overall renewable energy resources benchmark and its revised SER benchmark. Staff further recommends that DPLER transfer 7,920 RECs, including 65 out-of-state SRECs and 9 in-state SRECs, to its GATS reserve subaccount for its 2009 renewable energy resources benchmark within 45 days of the Commission's final decision in this proceeding. Further, Staff recommends that DPLER's 2010 overall SER benchmark be increased to include the shortfall for 2009, specifically, an additional 57 in-state SRECs, as consistent with the Commission's finding and order in Case No. 09-2006-EL-ACP.

Finally, Staff recommends that DPLER file an affidavit confirming that the 108 MWhs attributed to its proportional share of 2009 renewable generation at Killen have been "retired" and that these 108 MWhs have not, and will not, be used in any way that conflicts with Rule 4901:1-40-01(M), O.A.C.

- (11) On July 5, 2011, a representative of DPLER filed an affidavit attesting that the 108 MWhs attributed to its proportional share of 2009 renewable generation at Killen have been retired and that these 108 MWhs have not, and will not, be used in any way that conflicts with Rule 4901:1-40-01(M), O.A.C.
- (12) Upon review of DPLER's alternative energy portfolio status report, OEC's and ELPC's comments, Staff's findings and recommendations, and DPLER's affidavit, the Commission finds that DPLER satisfied its revised SER benchmark for 2009. Consequently, consistent with our approval of DPLER's

request for a *force majeure* determination in Case No. 09-2006-EL-ACP, we find that DPLER's SER benchmark for 2010 should be increased to include the shortfall for 2009 as calculated by Staff in its findings and recommendations. Finally, we find that DPLER's alternative energy portfolio status report for 2009 should be accepted.

It is, therefore,

ORDERED, That the motions to intervene filed by ELPC and OEC be granted. It is, further,

ORDERED, That the motion for admission *pro hac vice* of Robert Kelter be granted. It is, further,

ORDERED, That DPLER's alternative energy portfolio status report for 2009 be accepted in accordance with finding (12). It is, further,

ORDERED, That DPLER's 2010 SER benchmark be increased to include the shortfall for 2009, as calculated by Staff in its findings and recommendations. 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

  
Paul A. Centolella

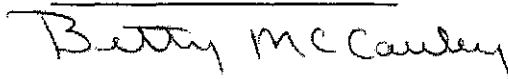
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MLW/sc

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Betty McCauley  
Secretary