

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Report of Duke)
Energy Ohio, Inc. Concerning its)
Advanced and Renewable Energy)
Baseline and Benchmarks)**

Case No. 11-2515-EL-ACP

Findings and Recommendations of the PUCO Staff

I. Statutory Background

Senate Bill 221, with an effective date of July 31, 2008, established Ohio's alternative energy portfolio standard (AEPS) applicable to electric distribution utilities and electric service companies. The AEPS is addressed principally in sections 4928.64 and 4928.65, Ohio Revised Code (ORC), with relevant resource definitions contained within 4928.01(A), ORC.

According to 4928.64(B)(2), ORC, the specific compliance obligations for **2010** are as follows:

- Renewable Energy Resources = 0.50% (includes solar requirement)
- Solar Energy Resources = 0.010%

In addition, there is a requirement that at least half of the renewable energy resources, including the solar energy resources, shall be met through facilities located in this state.

The PUCO further developed rules to implement the Ohio AEPS, with those rules contained within Ohio Administrative Code (OAC) 4901:1-40.

4901:1-40-05(A), OAC:

Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, an annual alternative energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks and planning requirements have or will be met. Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.

4901:1-40-05(C), OAC:

Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.

The findings and recommendations in this document pertain to the company's compliance status. This document does not address such matters as cost recovery or status relative to the statutory 3% cost provision.

II. Company Filing Summarized

Duke Energy Ohio, Inc. (Duke Ohio or Company) filed its 2010 advanced and renewable energy baseline and benchmarks report in Case No. 11-2515-EL-ACP. This filing was combined with Duke Ohio's ten year compliance plan report assigned to Case No. 11-2516-EL-ACP. The focus of these Staff Findings and Recommendations is the Company's annual status report in Case No. 11-2515-EL-ACP.

With respect to its annual status report for 2010, Duke Ohio calculated its unadjusted baseline of 19,812,520 megawatt-hours (MWHs) by averaging its annual sales for 2007, 2008, and 2009.¹ Duke Ohio proposed an adjustment to this baseline calculation to reflect increased levels of customer switching in its service territory. The Company argued that such an adjustment is permitted under 4928.64(B), ORC, and 4901:1-39-05(B), OAC. The proposed adjusted baseline was 10,102,436 MWHs, which the Company indicated is its actual full service sales for 2010.²

Applying the statutory benchmarks to its proposed adjusted baseline, the Company calculated its 2010 compliance requirements³ to be the following:

- Ohio Solar – 505 MWHs
- Non-Ohio Solar – 505 MWHs
- Ohio Non-Solar⁴ Renewables – 24,751 MWHs
- Non-Ohio Non-Solar Renewables – 24,751 MWHs

¹ Company status report, p. 2

² Company status report, p. 3

³ Company status report, p. 6

⁴ Staff uses "non-solar" in this context to refer to the total renewable requirement net of the specific solar requirement. Staff acknowledges that there is not a specific "non-solar" requirement in the applicable statute.

In addition, Duke Ohio's filing referred to a shortfall of 80 in-state solar renewable energy credits (SRECs) from 2009, which when added to the above calculation, results in a total Ohio solar requirement in 2010 of 585 MWHs.⁵

Duke Ohio asserted that it satisfied the above requirements, including the 80 SREC shortfall from 2009. The Company indicated that it secured the necessary renewable energy credits (RECs) and SRECs through market purchases involving brokers and aggregators, in addition to purchases directly from owners of renewable energy resources.

Duke Ohio also asked the Commission to provide direction on the retirement of the necessary RECs and SRECs for compliance purposes.⁶

III. Filed Comments

No persons filed comments in this proceeding.

IV. Staff Findings

Following its review of the annual status report and any timely comments submitted in this proceeding, Staff makes the following findings:

- (1) That Duke Ohio is an electric distribution utility in Ohio with retail electric sales during 2010, and therefore Duke Ohio has an AEPS compliance obligation for 2010.
- (2) That Duke Ohio filed its annual alternative energy portfolio status report for 2010 on April 15, 2011.
- (3) That the Company accurately computed its unadjusted baseline of 19,812,520 MWHs.
- (4) That the Company's proposed adjustment to its baseline as a result of customer switching is not consistent with Staff's interpretation of the applicable statute.⁷ Further, Staff finds the Company's reference to 4901:1-39, OAC, to be misplaced in this context.⁸

⁵ Company status report, p. 6

⁶ Company status report, p. 14

⁷ 4928.64, Ohio Revised Code

⁸ 4901:1-39, OAC, addresses the energy efficiency requirements introduced by 4928.66, ORC

- (5) That the Company's 2010 compliance obligations, using the statutory benchmarks and the Company's unadjusted baseline, are as follows:
- Ohio Solar – 991MWHs
 - Non-Ohio Solar – 990 MWHs
 - Ohio Non-Solar Renewables – 48,541 MWHs
 - Non-Ohio Non-Solar Renewables – 48,540 MWHs
- (6) That the Commission's Opinion and Order that addressed the Company's 2009 compliance status report required that Duke Ohio's shortfall of 92 Ohio S-RECs from 2009 be added to its compliance obligations for 2010.⁹ Duke Ohio's 2009 shortfall, when added to its solar requirement presented above, results in a total Ohio solar requirement for 2010 of 1,083 MWHs.
- (7) That Staff requested and received details on the RECs that Duke Ohio proposed to use towards its 2010 non-solar compliance obligation. The information provided by Duke Ohio indicated that it had sufficient RECs to satisfy its non-solar compliance obligation, including the minimum in-state requirement, based on the use of the unadjusted baseline. The information further indicated that the RECs originated from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008 and December 31, 2010.
- (8) That Staff requested and received details on the S-RECs that Duke Ohio proposed to use towards its 2010 solar compliance obligation. The information provided by Duke Ohio indicated that it had sufficient S-RECs to satisfy its solar compliance obligation, including the minimum in-state requirement, based on the use of the unadjusted baseline. The data also indicated that the Company could satisfy the 92 Ohio S-REC shortfall from 2009. The information further indicated that the S-RECs originated from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008 and December 31, 2010.
- (9) That to date the Company has not transferred any of the RECs or S-RECs that it intends to use towards its 2010 compliance requirements to its PJM EIS Generation Attribute Tracking System (GATS) reserve subaccount.

⁹ Case 10-0511-EL-ACP; Opinion and Order dated 2/14/12

V. Staff Recommendations

Following its review of the information submitted in this proceeding and other relevant data, Staff recommends the following:

- (1) That the Commission not accept the Company's proposed adjustment to its baseline.
- (2) That the unadjusted compliance obligations as detailed above in IV(5) and (6) be applied to the Company for 2010.
- (3) That Duke Ohio transfer 97,081 RECs and 2,073 S-RECs to its GATS reserve subaccount for 2010 Ohio compliance purposes. The RECs and S-RECs transferred should correspond to the details previously provided to Staff. Such transfer should occur within 45 days of the Commission's final decision in this proceeding. Staff will review the details of this transfer for confirmation and to ensure consistency with the data previously provided to Staff.
- (4) That for future compliance years in which Duke Ohio is utilizing GATS to demonstrate its Ohio compliance efforts, Duke Ohio initiate the transfer of the appropriate RECs and S-RECs to its GATS reserve subaccount between March 1st and April 15th so as to precede the filing of its Ohio annual compliance status report with the Commission.

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Summary: Staff Review and Recommendation electronically filed by Mr. Stuart M Siegfried on behalf of PUCO Staff