BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Dayton Power and Light Company for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility.	)))))	Case No. 09-891-EL-REN
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REPLY TO DP&L'S OPPOSITION
AND
COMMENTS ON AMENDED APPLICATIONS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On October 21, 2009, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion to Intervene and Comments in these utility-related proceedings. In this case, The Dayton Power and Light Company ("DP&L" or "Company") seeks certification as an eligible Ohio renewable energy resource generating facility under R.C. 4928.01(A)(35), per the applications it filed on October 1, 2009. The Commission's granting of the certificate would permit DP&L to produce and sell renewable energy credits ("RECs") under R.C. 4928.65. DP&L could also use the RECs to meet their own renewable energy benchmarks under R.C. 4928.64.

On August 28, 2009, the Company filed a "Reply in Opposition to the Office of the

Ohio Consumers' Counsel's Motion to Intervene."[1] In reality DP&L opposed certain comments that OCC made in the document that contained OCC's motion to intervene and DP&L did not actually oppose OCC's motion to intervene. DP&L requested the Commission issue a ruling that would grant approval of DP&L's applications for certification as an eligible Ohio renewable energy resource generating facility. Also, DP&L filed amended applications on October 29, 2009. OCC comments on DP&L's amended applications and DP&L's Reply in Opposition to the Office of the Ohio Consumers' Counsel's Motion to Intervene.

II. COMMENTS ON AMENDED APPLICATIONS

A. R.C. Sections 4928.64 And 4928.65 Will Allow DP&L To Earn Credits Based Only Upon The Number Of Btu's Generated From The Renewable Sources Used At Killen.

DP&L's amended applications differ from the initial applications by specifying the percentage of renewable fuel that would be used in the plant. DP&L indicates in the amended applications that DP&L will use "up to 10% wood cellulose pellets (on a heat input basis)" in its Amended Application in case No. 09-891-EL-REN.[2] Under R.C. 4928.65, DP&L should receive one renewable energy credit "for each megawatt hour of electricity derived from renewable energy resources." So if 10% of the btus produced by the Killen Plant are generated through wood cellulose pellets (as it appears that DP&L is hoping), then only 10% of the megawatt hours of electricity produced should contribute to renewable energy credits. If only 5% of the btus produced by the Killen Plant are

[1]DP&L titled this filing "Reply in Opposition to Office of Ohio Consumers' Counsel's Motion to Intervene" is in the nature of a memorandum contra.
[2] Case No. 09-891-EL-REN, Amended Application Section G.1.

generated through wood cellulose pellets, then only 5% of the megawatt hours produced by the Killen Plant should be contributed to renewable energy credits.

In the Amended Application in Case No. 09-892-EL-REN, DP&L claims that it will use "up to 20% biodiesel with its current #2 fuel oil use."[3] But in this amended application, DP&L does not appear to be saying that up to 20% of the btus produced by the Killen Plant will be generated through biodiesel. Although up to 20% of the fuel used may be renewable fuel it does not necessarily follow that up to 20% of the btus produced will be produced by renewable fuel. So DP&L should only get renewable energy credits based upon the percentage of the btus generated by the biodiesel.

B. Under No Circumstances Should DP&L Be Permitted To Get Additional Credits Based Upon The New Provision Under R.C. 4928.65 Because DP&L Does Not Propose That The Fuel Used By Killen To Produce Power Will Be Principally From Biomass.

DP&L did not specify the Revised Code section under which it filed its original or amended applications. As OCC explains below, the Commission should not grant the application under the new provisions of R.C. 4928.65. A post-SB 221 enacted provision under R.C. 4928.65 provides that:

> A generating facility of seventy-five megawatts or greater that is situated within this state and has committed by December 31, 2009, to modify or retrofit its generating unit or units to enable the facility to generate principally from biomass energy by June 30, 2013, each megawatt hour of electricity generated principally from that biomass energy shall equal, in units of credit, the product obtained by multiplying the actual percentage of biomass feedstock heat input used to generate such megawatt hour by the quotient obtained by dividing the then existing unit dollar amount used to determine a renewable energy compliance payment as provided under division (C)(2)(b) of section 4928.64 of the Revised Code by the then existing market value of one renewable energy credit, but such mega watt hours shall not equal less than one unit credit.

[3] Case No. 09-892-EL-REN, Amended Application Section G.1.

Neither of DP&L's applications come within the newly enacted provision because in order to apply the facility must "generate principally from biomass energy by June 30, 2013." In neither of the applications does DP&L propose that renewable energy sources will be the principal fuel for the Killen plant.

The definition of the adjective "principal" is 1. "First in rank, authority, importance, degree, etc."[4] In other words, in order to qualify under the new provision, the Killen plant must generate more than 50% of its btus from biomass fuel. DP&L does not propose under either application that the Killen plant will ever generate with more than 50% biomass energy. Accordingly, DP&L should not receive more than 1 credit for each megawatt hour generated through biomass fuel.

III. CONCLUSION

DP&L's applications for certifications as an eligible Ohio renewable energy resource generating facilities should be approved for only the percentage of btus the biomass fuel produces at Killen. If the wood cellulose pellets produce only 5% of the btus from Killen then DP&L should get credit for only 5% of the megawatt hours generated. If the biodiesel produces less than 20% of the btus produced, even though 20% of the fuel used is biodiesel, DP&L should get less than 20% of the megawatt hours produced by Killen toward renewable energy credits.

In no case should DP&L get more than one renewable energy credit for each megawatt hour produced by the biomass fuel. The projects proposed in the applications do not come close to meeting the requirement for "the facility to generate principally

[4] New World Dictionary, Second College Edition (1978) at 1130.

from biomass energy by June 30, 2013" to allow additional energy credits under the new SB 2 provision of R.C. 4928.65.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments and *Reply* was served on the persons stated below via first class U.S. Mail, postage prepaid, this 9th day of November 2009.

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Summary: Reply Reply to DP&L's Opposition and Comments on Amended Applications by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Ms. Ann M. Hotz and Office of the Ohio Consumers' Counsel