

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the Application of DPL)	Case No. 09- 2006-EL-ACP
Energy Resources Inc. for)	
An Amendment of the 2009 Solar Energy)	
Resource Benchmark, Pursuant to Section)	
4928.64(C)(4), Ohio Revised Code)	

APPLICATION FOR A FORCE MAJEURE DETERMINATION

DPL Energy Resources Inc. (“DPLER” or “Company”) hereby submits this application pursuant to Section 4928.64(C)(4) of the Ohio Revised Code (“ORC”) seeking a *force majeure* determination with regard to DPLER’s 2009 Ohio Solar Energy Resource benchmark. Section 4928.64(B)(2), ORC specifically mandates that DPLER meet a Solar Energy Resource (“SER”) benchmark of .004% in 2009, half of which must be met with resources located within the State of Ohio. The Commission’s final rules related to the alternative energy resource requirements, which have been in development over the past 16 months, have just recently become effective¹. Even with this regulatory uncertainty, DPLER has undertaken significant efforts to comply with its statutory benchmarks. Despite DPLER’s substantial good faith efforts to comply with the 2009 Ohio SER benchmark as described herein, it has been unable to achieve compliance. DPLER has achieved compliance with both the non-solar renewable energy resource benchmarks and the non-Ohio SER benchmark, provided that all of the applications for certification pending before the Commission are approved. Consequently, DPLER respectfully requests that the Commission make a determination pursuant to the Commission’s *force majeure* authority under ORC § 4928.64(C)(4) and Section 4901:1-40-06 of the Ohio Administrative

¹ The PUCO “Green Rules” issued in Case No. 08-888-EL-ORD were effective December 10, 2009.

Code (“OAC”) that DPLER’s 2009 Ohio SER benchmark be reduced by the amount of DPLER’s actual shortfall.

In further support of its application, DPLER states the following:

1. DPLER is an “electric services company” as that term is defined in ORC §4928.01(A)(9).
2. ORC §4928.64(B) requires an electric services company to provide a portion of its electricity supply for retail customers in Ohio from alternative energy resources, including a specific requirement that a portion of its renewable energy portfolio include SERs.
3. Pursuant to ORC §4928.64(B)(2), and OAC §4901:1-40-03(A)(2), DPLER is required to meet a SER benchmark of .004% in 2009, half of which must be met with resources located within the State of Ohio.
4. ORC §4928.65 and OAC §4901:1-40-04(D) permit the use of Renewable Energy Credits (“RECs”) at any time in the five calendar years following the date of their purchase or acquisition for the purpose of complying with the renewable energy and solar energy resource requirements of ORC §4928.64(B)(2).
5. For the past 16 months, the Commission has conducted a rulemaking proceeding in Case No. 08-888-EL-ORD to develop rules implementing the Ohio SER statutory requirement. The rules only recently became effective, on December 10, 2009.
6. As provided for in The Dayton Power and Light Company’s (“DP&L”) alternative energy compliance plan as approved by Commission Finding and Order dated June 24, 2009 in ESP case, Case No. 08-1094-EL-SSO, *et al.*, DP&L calculated its compliance obligations based upon the retail sales of DP&L and DPLER combined and planned to undertake activities geared toward meeting the requirements of the SER on behalf of both companies.

7. DPLER's efforts to comply have in fact resulted in compliance for the non-Ohio SER portion of its statutory requirement. Unfortunately, despite its good faith efforts for full compliance, DPLER has been unable to satisfy the Ohio portion of its SER, and consequently seeks a *force majeure* determination on the Ohio SER.

8. A Request For Proposal ("RFP") was issued on July 24, 2009 seeking RECs which complied with the requirements of ORC §4928.65 and OAC §4901:1-40-04(D). In response to the Ohio solar REC portion of the RFP, only one offer for a long-term contract was received. It was for approximately 4 Ohio solar RECs per year, over a five year period.

9. Relationships have also been developed with several REC industry brokers with whom there is frequent contact in the hope that Ohio Solar RECs can be purchased through the brokers' network of contacts.

10. In July and September 2009, in response to "reverse" RFPs, competitive, yet ultimately losing, bids were submitted to purchase approximately 288 Ohio Solar RECs from two Ohio-based sources.

11. In addition, an attempt was made to identify larger (greater than 20 kW) Ohio solar systems installed by local solar contractors and recipients of grant awards. Individual contact was made with each of the owners of these new larger solar installations via email and/or telephone to attempt to purchase RECs from these new installations.

12. In August 2009, a mass mailing was completed to 128 residents within the state of Ohio who received grant awards for small (less than 20 kW) solar projects, and an offer was made to purchase RECs from these small installations. These one on one contacts have been met with mixed results. Some project owners were assisted with their understanding of the value of their RECs, while others refused to sell them in anticipation of receiving a higher price through

various other programs or bidders. As part of the same process, many owners were assisted as they navigated the PUCO certification process.

13. Despite these good faith efforts to comply with the Ohio SER benchmark, only approximately 36 % of DPLER's Ohio SER requirement could be purchased.² Offers to purchase and actual purchases were competitive, generally falling within the current market value for Ohio solar RECs.

14. Based upon its significant efforts to purchase Ohio solar RECs, DPLER concludes that there is currently an insufficient supply of Ohio solar resources from which it can purchase RECs to achieve full compliance with the Ohio SER benchmark for 2009.

15. DPLER has pursued all reasonable compliance options, including REC solicitations, purchases, building projects, partnering with customers, cold calling project owners and developers, and competitive bidding on long-term contracts. Notwithstanding these good faith compliance efforts, DPLER currently has a shortfall of Ohio solar RECs for 2009. DPLER will continue in its good faith effort to purchase additional Ohio solar RECs while this application is pending Commission approval.³

16. ORC §4928.64(C)(4)(a), empowers the Commission to make a *force majeure* determination with respect to DPLER's ability to meet its Ohio SER benchmark under ORC §4928.64(B)(2). The Commission is further permitted, pursuant to ORC §4928.64(C)(4)(c) and OAC §4901:1-40-06, to modify DPLER's compliance obligation to accommodate a finding that Ohio solar resources are not reasonably available to permit DPLER to comply with its 2009 benchmark.

² Some of the Ohio solar RECs purchased on behalf of DPLER included in this figure have not yet been certified as qualified resources pursuant to the Commission's rules.

³ The figures reflected in this filing represent the RECs purchased by DPLER or on its behalf as of December 28, 2009, and are subject to change as DPLER continues in its efforts to purchase additional RECs throughout the remainder of the year.

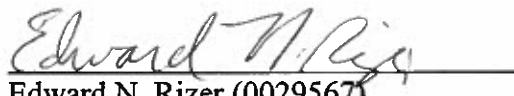
17. DPLER hereby requests that the Commission determine that a *force majeure* condition exists with respect to DPLER's ability to meet its 2009 Ohio SER obligation, and modify DPLER's Ohio solar benchmark requirement by the amount of DPLER's actual shortfall at the end of 2009. Based on the above-described market conditions and extensive good faith efforts to comply with its 2009 Ohio SER benchmark, DPLER submits that it is appropriate for the Commission to grant the relief requested in this application.

18. DPLER further requests a waiver, pursuant to OAC §4901:1-40-02(B), of any requirement of Chapter 4901:1-40 of the Ohio Administrative Code necessary in granting the relief requested in this application.

CONCLUSION

For the foregoing reasons, DPLER respectfully requests that the Commission approve this application and issue a finding and order, pursuant to ORC §4928.64(C)(4), and OAC §4901:1-40-06, reducing DPLER's 2009 Ohio SER benchmark by the amount of DPLER's actual shortfall of certified Ohio solar RECs.

Respectfully Submitted,



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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/30/2009 11:41:18 AM

in

Case No(s). 09-2006-EL-ACP

Summary: Application Application of DPL Energy Resources, Inc. for a force majeure determination with regard to DPLER`s 2009 Solar Energy Benchmark electronically filed by Ms. Judi L Sobecki on behalf of DPL Energy Resources Inc.