

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Dayton Power and Light Company for)
Approval of a Force Majeure Determination) Case No. 09-1989-EL-ACP
for a Portion of the 2009 Solar Energy)
Resources Benchmark Requirement)
Pursuant to Section 4928.64(C)(4) of the)
Ohio Revised Code.)

FINDING AND ORDER

The Commission finds:

- (1) The Dayton Power and Light Company (DP&L) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric utilities to acquire a portion of the electric utility's standard service offer from renewable energy resources. Specifically, the statute provides that, for 2009, a portion of the electric utility's electricity supply for its standard service offer must come from alternative energy sources, including 0.004 percent from solar energy resources (SER); this requirement increases to 0.010 percent for 2010. In addition, the statute requires that at least one-half of the renewable energy resources implemented by the utility be met through facilities located in Ohio.
- (3) On December 23, 2009, DP&L filed an application, requesting that the Commission make a force majeure determination regarding its 2009 SER benchmark and reduce its Ohio SER benchmark by the amount of DP&L's actual shortfall of Ohio solar renewable energy credits (SRECs).
- (4) Motions to intervene in this proceeding have been filed by Industrial Energy Users-Ohio (IEU-Ohio), the Environmental Law and Policy Center (ELPC), the Ohio Environmental Council (OEC), the Vote Solar Initiative (Vote Solar), and the Office of the Ohio Consumers' Counsel (OCC).

No party opposed the motions to intervene. The Commission finds that the motions to intervene are reasonable and should be granted.

- (5) In its application, DP&L notes that, as provided for in the stipulation approved by the Commission in DP&L's electric security plan proceeding, DP&L's near-term plan for compliance with its SER requirements is to purchase SRECs. DP&L claims that to comply with the statutory benchmarks, it would need to produce or obtain approximately 486 MWh of energy from a solar energy resource, or obtain equivalent SRECs, with at least one-half, or approximately 234 MWhs, generated by solar energy resources in Ohio. DP&L states that, provided that all of the applications for certification of renewable energy resource generating facilities pending before the Commission are approved, in terms of the overall SER benchmark, it has acquired the maximum number of SRECs permitted from non-Ohio sources.

However, DP&L states that it has not satisfied the 2009 Ohio SER benchmark. DP&L represents that, on July 24, 2009, it issued a Request for Proposal (RFP) seeking renewable energy credits, but, in response to the Ohio SER portion of the RFP, it received only one offer for a long-term contract for approximately 4 Ohio SRECs per year, over a five-year period. In addition, in July and September 2009, DP&L submitted unsuccessful bids to purchase approximately 288 Ohio SRECs from two Ohio-based sources in separate reverse RFPs. DP&L states that its efforts to purchase SRECs also included developing relationships with several SREC industry brokers and contacting Ohio recipients of grant awards for both large (greater than 20kW) and small solar projects to attempt to purchase SRECs from these sources. Despite these efforts, DP&L obtained only 85 SRECs from residential and commercial customers. Therefore, at the time of its filing, DP&L had a shortfall of approximately 149 Ohio SRECs for 2009.

DP&L argues that, based on its experience with respect to its significant efforts to purchase Ohio SRECs, there is currently an insufficient supply of Ohio solar resources from which DP&L can purchase SRECs to achieve full compliance with the Ohio SER benchmark for 2009. DP&L states that it has committed to

build a new solar facility at one of its substation sites, and that project, which is scheduled to go into service on April 1, 2010, is expected to generate approximately 1000 SRECs to assist in meeting DP&L's 2010 Ohio SER benchmark.

- (6) On February 26, 2010, comments regarding DP&L's application were filed by ELPC, OEC, OCC, and Vote Solar (collectively, the consumer and environmental advocates). These parties argue that, pursuant to Section 4928.64, Revised Code, DP&L should be subjected to the alternative compliance payment for its failure to meet the SER benchmark. While acknowledging that DP&L did not ignore its SER obligations, the consumer and environmental advocates maintain that DP&L did not expend the appropriate effort to ensure that it met its 2009 benchmarks. Alternatively, the consumer and environmental advocates argue that DP&L should be required to recover any waived 2009 SERs in 2010, just as the 2010 SER benchmarks for AEP-Ohio were increased when the companies' request for force majeure waiver of their 2009 SER benchmarks were granted.
- (7) Upon review of the application and the other filings in this proceeding, the Commission finds that DP&L's application is reasonable and should be granted. 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 utility's compliance with the statutory benchmarks. The statute further provides that the Commission shall consider the electric utility'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 PJM Interconnection, L.L.C., or the Midwest Independent Transmission System Operator.

The Commission notes that DP&L attempted to accomplish its goal of purchasing sufficient SRECs by conducting or participating in several RFPs, working with SREC industry brokers and contacting recipients of solar grants. While DP&L's efforts enabled it to obtain the maximum number of non-Ohio SRECs allowed to count towards satisfaction of the overall SER benchmark, DP&L was unable to obtain enough Ohio SRECs to meet this requirement.

Therefore, we find that there was an insufficient quantity of Ohio-based solar energy resources reasonably available in the market and that DP&L has presented sufficient grounds for the Commission to reduce its aggregate 2009 SER benchmark to the level of SRECs acquired through DP&L's 2009 process. The Commission acknowledges that in its electric security plan proceeding we approved DP&L's plan to satisfy its SER requirements by purchasing SRECs, and we are aware that DP&L intends to bring its own solar facility on-line soon in order to facilitate its efforts to meet its benchmarks in the future. However, if these efforts prove not to be a viable means to meet the statutory requirement, the Commission notes that DP&L remains responsible for meeting the statutory SER benchmarks through all means possible. Further, pursuant to Section 4928.64(C)(4)(c), Revised Code, our approval of DP&L's application is contingent upon DP&L meeting its revised 2010 SER benchmark, which shall be increased to include the shortfall for the 2009 Ohio SER benchmark.

It is, therefore,

ORDERED, That DP&L's application be granted. It is, further,

ORDERED, That DP&L's 2010 SER benchmark be increased as set forth in finding (7). It is, further,

ORDERED, That the motions to intervene filed by IEU-Ohio, ELPC, OEC, Vote Solar and OCC be granted. 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



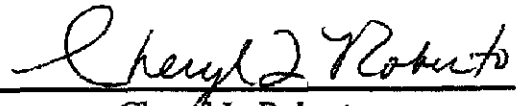
Alan R. Schriber, Chairman

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Entered in the Journal

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Renee J. Jenkins
Secretary