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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF DUKE ENERGY RETAIL SALES, LLC'S ANNUAL ALTERNATIVE ENERGY PORTFOLIO STATUS REPORT	)))	Case No. 10-508 -EL-ACP
IN THE MATTER OF DUKE ENERGY RETAIL SALES, LLC'S REQUEST FOR FORCE MAJEURE DETERMINATION	)))	Case No. 10-509 -EL-ACP

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DUKE ENERGY RETAIL SALES, LLC'S ANNUAL ALTERNATIVE ENERGY PORTFOLIO STATUS REPORT AND PLAN FOR COMPLIANCE WITH FUTURE ANNUAL ADVANCED AND RENEWABLE ENERGY BENCHMARKS

DUKE ENERGY RETAIL SALES, LLC'S REQUEST FOR FORCE MAJEURE DETERMINATION REGARDING ITS BENCHMARK FOR ELECTRICITY GENERATED FROM SOLAR ENERGY RESOURCES

I. INTRODUCTION

Duke Energy Retail Sales, LLC ("DERS") is a Competitive Retail Electric Service ("CRES") provider, as defined within Ohio Revised Code §4928.01(A)(4), and an electric services company as defined within Ohio Revised Code §4928.01(A)(9), having been issued Certificate No. 04-124(3) by The Public Utilities Commission of Ohio ("Commission"). DERS is a wholly owned subsidiary of Duke Energy Commercial Enterprises, Inc. Both DERS and its corporate parent are members of the Duke Energy Corporation family of companies. DERS is currently authorized to conduct business within, and is in good standing within, the States of Ohio, Delaware, Illinois and New Jersey. DERS currently provides electric supply to commercial, industrial, and residential consumers within the State of Ohio.

Pursuant to Ohio Revised Code § 4928.64 and Ohio Admin. Code § 4901:1-40-05, all Ohio electric service companies are required to file, by April 15 of each year, an Annual Alternative Energy Portfolio Status Report. In this report, electric service companies are required to analyze "all activities undertaken the prior calendar year to demonstrate how the applicable alternative energy portfolio benchmarks and planning requirements have or will be met."[1] Beginning in 2010, the annual review is to include compliance with the most recent applicable renewable energy and solar energy resource benchmarks. To meet these requirements, DERS submits the following report, which:

- Identifies its 2009 energy baseline;
- Identifies its 2009 renewable energy and solar energy benchmarks and demonstrates its substantial compliance with those benchmarks;[2] and
- Outlines its renewable energy compliance strategy.

Following its report, pursuant to Rule 4901:1-40-06, DERS requests a force majeure determination for its Ohio Revised Code §4928.64(B)(2) benchmark requirement for electricity generated from solar energy resources. DERS also requests a corresponding modification of its solar benchmark obligation. Finally, DERS submits its Plan for Compliance with Future Annual Advanced- and Renewable-Energy Benchmarks as required by Ohio Admin. Code § 4901:1-40-03(C).

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[1] Ohio Admin. Code § 4901:1-40-05(A).

[2] Pursuant to Ohio Rev. Code § 4928.64(C)(3), a CRES "need not comply with a [renewable and solar energy] benchmark . . . to the extent that its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three percent or more." Ohio Rev. Code § 4928.64(C)(3); *see also* Ohio Admin. Code § 4901:1-40-07(B). DERS submits that its reasonably expected cost of renewable and solar energy benchmark compliance for 2009 greatly exceeded its reasonably expected cost of otherwise producing or acquiring the requisite electricity by far more than three percent. Nevertheless, DERS has chosen not to seek a formal determination that it is not required to comply with the renewable and solar energy benchmark requirements.

II. ANNUAL ALTERNATIVE ENERGY PORTFOLIO STATUS REPORT

Pursuant to Ohio Rev. Code § 4928.64(B)(2) and Ohio Admin. Code § 4901:1-40-03(A)(2), for the year 2009, electric service companies must demonstrate that 0.25% of the retail electricity they sold was derived from renewable energy resources. Of that 0.25%, half must have been generated by facilities located in Ohio. In addition, 0.004% of the 0.25% requirement must have been generated by solar energy resources. At least half of this 0.004% requirement must have been generated by facilities located within Ohio. The level of these benchmark requirements is determined by first calculating a baseline number of kilowatt hours and then applying the benchmark percentages to that baseline.

A. Initial Baseline Calculation

Ordinarily, an electric service company's baseline is to be computed by averaging the number of kilowatt-hours sold during the three preceding calendar years. DERS, however, had no electric sales in Ohio during the years 2006, 2007, and 2008. In such a case, Ohio Admin. Code § 4901:1-40-03(B)(2)(b) provides:

> For an electric services company with no retail electric sales in the state during the preceding three calendar years, its initial baseline shall consist of a reasonable projection of its retail electric sales in the state for a full calendar year.

DERS projected its annual calendar year retail electric sales in Ohio to be 934,540 MWH. In preparing this projection, DERS took into consideration the estimated annual consumption of its customers currently under contract, as well as the potential marketing opportunity as determined by comparing the Electric Distribution Utilities' price-to-compare and the then current wholesale power price curve.

B. 2009 Renewable and Solar Energy Benchmarks

Using 934,540 MWH as its 2009 baseline, DERS' calculation of its benchmarks for electricity generated from renewable and solar energy resources for the year 2009 is as follows:

2009 Baseline		934,540 MWH
Total Renewable and Solar Requirement	(0.25%)	2,337 MWH
Solar Requirement	(0.004%)	38 MWH
2009 Renewable Requirement (Total Less Solar)		2,299 MWH

2009 Renewable Requirement By Jurisdiction (Total Less solar)		2,299 MWH
Ohio	**50%**	**1,150 MWH**
Out of State	**50%**	**1,149 MWH**
2009 Solar Requirement		38 MWH
Ohio	**50%**	**19 MWH**
Out of State	**50%**	**19 MWH**

C. DERS' Demonstration of Compliance with 2009 Renewable Energy Benchmarks

Pursuant to Ohio Rev. Code § 4928.65, electric service companies may meet their renewable energy benchmarks through the use of renewable energy credits (RECs). Except for its solar power obligation, DERS has successfully met its renewable energy benchmarks using RECs.

1. In-state, Non-Solar, Renewable Energy Credits

As depicted on Exhibit 1, DERS obtained sufficient non-solar, in-state RECs to fully satisfy its 2009 REC obligations. It was able to do so by means of market purchases through brokers.

2. Out-of-state, Non-Solar, Renewable Energy Credits

By means of market purchases through brokers, DERS was able to obtain sufficient non-solar adjacent state RECs to fully satisfy its 2009 REC obligations. *See* Exhibit 1.

3. Out-of-State and In-State Solar Renewable Energy Credits

DERS was unable to obtain any solar RECs (SRECs) and has no solar generation facilities itself. Below, DERS requests a force majeure determination regarding its solar benchmark.

D. Summary of DERS' Compliance Strategy

DERS' renewable energy source compliance strategy for 2009 was to purchase the required RECs and SRECs through market brokers. Given that this Commission's rules were not finalized until October 2009 and did not become effective until December 11, 2009, DERS proved unable to purchase the necessary SRECs in the market.

Moving forward to 2010, DERS intends to broaden its compliance efforts. It will continue to purchase both RECs and SRECs in the market. DERS also intends to respond to Requests for Proposals (RFPs), and intends to solicit facilities located within Ohio that possess solar arrays.

III. REQUEST FOR FORCE MAJEURE DETERMINATION FOR DERS' BENCHMARK FOR ELECTRICITY GENERATED FROM SOLAR ENERGY RESOURCES AND FOR CORRESPONDING MODIFICATION OF THAT BENCHMARK

Ohio Rev. Code §4928.64(C)(4)(a) empowers the Commission to make a force majeure determination with respect to an electric service company's ability to meet its solar energy benchmark requirement. The Commission is further permitted, pursuant to Ohio Rev. Code § 4928.64(C)(4)(c) and Ohio Admin. Code §4901:1-40-06, to modify an electric service company's benchmark to accommodate a finding that SRECs are not reasonably available. Pursuant to these provisions, DERS requests that this Commission make a force majeure determination for its 2009 benchmark for electricity generated from solar energy resources. It correspondingly requests that the Commission grant it a waiver of its solar energy benchmark for 2009.

The Commission rules require that compliance with the solar benchmark requirement be documented by use of SRECs registered with an approved registry which tracks generation from solar facilities that have previously received a renewable energy certificate from the Commission. Ohio Revised Code §4928.65 and Ohio Admin. Code § 4901:1-40-04(D) permit the use of SRECs 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 Ohio Rev. Code § 4928.64(B)(2). For the past year and a half, the Commission has conducted a rulemaking proceeding in Case No. 08-888-EL-ORD to develop rules implementing the SREC statutory requirement. These rules became effective on December 10, 2009.

DERS has been unable to locate sufficient Ohio and qualified out-of-state solar projects through consulting entities such as SNL Financial, Pira Energy Group, or Ventyx, and there are no written resources that it is aware of that might provide such data. DERS does not own any solar electricity generation facilities. Therefore, although DERS has established SREC banking accounts through the Generation Asset Tracking System (GATS) and pursued all reasonable compliance options including, but not limited to, SREC solicitations, DERS has been unable to obtain any SRECs. DERS, however, was able to obtain 8,815 non-solar RECs, far exceeding its 2009 benchmark for electricity generated from renewable energy resources and demonstrating its commitment to providing electricity through renewable energy resources.

DERS submits that it has been unable to obtain any SRECs because no SREC market with sufficient liquidity exists and because few SRECs are available through bilateral contracts. Indeed, in Case Nos. 09-987-EEC, 09-988-EEC 09-1922-EL-ACP, and 09-1989-EL-ACP, the Commission has already determined that a force majeure condition exists as to the availability of SRECs for Columbus Southern Power, Ohio Power Company, Ohio Edison Co., Cleveland Electric Illuminating Co., Toledo Edison Co., and Dayton Power & Light Co., and granted waivers of the 2009 solar energy benchmarks to these utilities. The Commission granted these waivers on the condition that the companies' SREC requirement for 2009 be made up in 2010.

In addition, the Commission's own market monitoring website indicates that during calendar year 2009, CRES suppliers made retail sales in these companies' service areas. Thus, CRES providers experienced the same dearth of SRECs experienced by the investor-owned utilities that led the Commission to declare a force majeure and grant them waivers of the solar energy benchmark for 2009. Presumably CRES providers will soon be seeking similar waivers.

DERS faces the same inability to obtain SRECs as the utilities for which the Commission has already made force majeure findings and granted solar energy benchmark waivers.

In addition, a review of the Commission's own statistics as to the issuance of SRECs supports the conclusion that SRECs for 2009 simply were not available. Attached as Exhibit 2 is a chart showing all the facilities, both in Ohio and outside of Ohio, for which the Commission has issued a Renewable Energy certificate as of March 28, 2010. Projects known not to be on line for 2009 based on information contained in public filings, are listed on Exhibit 2 as being unavailable. The sum of the solar generation capacity for all certificated solar facilities deliverable into Ohio as demonstrated by Exhibit 2 is a mere 1.092 MW of capacity. Assuming that all of the listed projects were available for every clock hour in 2009, which is highly unlikely, and an optimistic assumption of 25% capacity for a solar facility in Ohio and the surrounding states, the maximum megawatt-hours that could have been generated for 2009 would still equal something less than 3,000 MWH.[3] The Commission's website lists total utility sales in Ohio alone at over 116 million MWH. Thus, compliance with the solar energy benchmark rule would require Ohio utilities and electric service companies to acquire roughly twice the number of SRECs available – even assuming, again, that all of the facilities listed were available for every clock hour of the year and that none was already under contract for delivery outside Ohio. Given the lack of operating solar facilities which have been certified at this time, the Commission should grant DERS the same type of compliance postponement granted to

[3] Each SREC is the equivalent of one MWh.

Dayton Power & Light Co. and the operating utilities of American Electric Power and FirstEnergy Corp.[4]

DERS therefore respectfully requests that the Commission approve its request for a force majeure determination regarding its solar energy benchmark requirement and its corresponding request for a waiver of its 2009 solar energy benchmark. DERS further requests that the Commission increase its 2010 solar energy benchmark by 38 MWH, which is its unmodified 2009 solar energy benchmark.

IV. PLAN FOR COMPLIANCE WITH FUTURE ANNUAL ADVANCED- AND RENEWABLE-ENERGY BENCHMARKS

A. Baseline for Current and Future Calendar Years

DERS just began to provide electric supply to customers in 2009. DERS continues to establish new customer contracts, and switching in Ohio is increasing. Therefore, DERS is unable to forecast what its baseline will be for 2010 or for future calendar years with any confidence.

B. Supply Portfolio Projection, Including both Generation Fleet and Power Purchases

DERS does not own and has no plans to construct or purchase any electric generation facilities. Therefore, DERS will continue to supply power to its customers by purchasing power through market brokers, RFPs, and third party contracts. DERS is unable to forecast with any confidence the precise nature or quantity of its power purchases, again, because it has just begun to provide power to customers.

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[4] As of April 14, 2010, 375 facilities have applied to the Commission to become certified solar generation facilities. Thus, it may be possible for electric service providers to meet a 2010 SREC requirement.

C. Description of Methodology Used to Evaluate Compliance Options

As noted above, DERS does not own or anticipate owning any generation facilities. Therefore, DERS will meet its alternative energy benchmarks through the purchasing of RECs and SRECs. DERS is unable to provide a more detailed description of its compliance methodology, since the Commission's regulations requiring this projection became effective a mere four months ago, leaving DERS insufficient time to create such a methodology.

D. Impediments to Achieving Compliance with Benchmarks

Given that the Commission's rules have only been in effect for approximately four months, DERS has not had sufficient time to determine what impediments might exist to achieving compliance with the alternative energy benchmarks, apart from the impediments to achieving compliance with benchmarks for electricity generated from solar energy resources, as discussed above.

V. CONCLUSION

Based on the foregoing, DERS respectfully requests that this Commission approve its request for a determination of force majeure regarding its benchmark for electricity generated from solar resources and corresponding request for a waiver of that benchmark requirement. In addition, DERS requests that the Commission find that DERS has met its REC benchmarks for the year 2009. Finally, DERS requests that the Commission direct it to move the necessary RECs into its GATS reservation account in order to permanently retire those 2009 RECs used to meet the renewable energy requirement applicable to DERS.

Respectfully submitted,

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[redacted]

Duke Energy Retail Sales

Renewable Energy Credit Target

Forecast		934,540	MWh
Requirement			
Solar	0.004%	38	RECs
Non-Solar	0.246%	2,299	RECs
Total	0.250%	2,337	RECs

Solar Requirement		
In-state	19	RECs
Out of State	19	RECs
Total	38	RECs

Non-Solar Requirement		
In-state	1150	RECs
Out of State	1149	RECs
Total	2299	RECs

What was done to meet the target?

Worked through brokers in the commodities market to purchase non-solar RECs.
Were unable to find any available Solar RECs to be in compliance.

Current Inventory

Solar Requirement		
In-state	0	RECs
Out of State	0	RECs
Total	0	RECs

Non-Solar Requirement		
In-state	8,815	RECs
Out of State	10,000	RECs
Total	18,815	RECs

Exhibit 2

EL-REN : Solar Applications

Applicant Name	Case Number	Approval Date	Certification Number	Nameplate Capacity
D. D'Angelo Residence	09-1027-EL-REN	12-2-09	09-SPV-PA-GATS-0055	36 kW
L. Hollish Residence	09-1028-EL-REN	12-2-09	09-SPV-PA-GATS-0056	9 kW
J. Leichter Residence	09-1029-EL-REN	12-16-09	09-SPV-PA-GATS-0071	5.1 kW
D. Miller Residence	09-1030-EL-REN	12-9-09	09-SPV-PA-GATS-0060	4.4 kW
J. Neary Residence	09-1031-EL-REN	12-2-09	09-SPV-PA-GATS-0057	5.3 kW
D. Platt Residence	09-1032-EL-REN	1-13-10	10-SPV-PA-GATS-0018	3.1 kW
G. Schappell Residence	09-1033-EL-REN	12-9-09	09-SPV-PA-GATS-0061	2.1 kW
K. Senecal Residence	09-1034-EL-REN	12-2-09	09-SPV-PA-GATS-0058	8.1 kW
C. Tourtellot Residence	09-1035-EL-REN	12-9-09	09-SPV-PA-GATS-0062	2 kW
P. Yost Residence	09-1038-EL-REN	1-7-10	10-SPV-OH-GATS-0009	6.8 kW
E. Roberts Solar Array	09-1049-EL-REN	12-16-09	09-SPV-KY-GATS-0081	3.33 kW
J. Blais Residence	09-1072-EL-REN	12-16-09	09-SPV-PA-GATS-0070	5.3 kW
D. Bunnell Residence	09-1073-EL-REN	12-16-09	09-SPV-PA-GATS-0076	8.4 kW
M.J. Comey Residence	09-1074-EL-REN	12-16-09	09-SPV-PA-GATS-0077	19.2 kW
G. Eby Residence	09-1075-EL-REN	12-16-09	09-SPV-PA-GATS-0078	5.7 kW
K. Edleman Residence	09-1076-EL-REN	12-16-09	09-SPV-PA-GATS-0069	4.8 kW
K. Erdman Residence	09-1077-EL-REN	12-16-09	09-SPV-PA-GATS-0072	7.2 kW
D. Hoover Residence	09-1078-EL-REN	12-16-09	09-SPV-PA-GATS-0073	9 kW
B. Lindsey Residence	09-1079-EL-REN	12-16-09	09-SPV-PA-GATS-0074	6 kW
M. Rubinger Residence	09-1080-EL-REN	12-16-09	09-SPV-PA-GATS-0075	10.4 kW
Croatan Solar Array	09-1084-EL-REN	1-13-10	10-SPV-KY-GATS-0015	9.2 kW
Bennett Solar Array	09-1085-EL-REN	1-13-10	10-SPV-KY-GATS-0016	3.4 kW
A. Bragoli Residence	09-1098-EL-REN	1-13-10	10-SPV-PA-GATS-0011	5.4 kW
W. Ealey Residence	09-1099-EL-REN	1-13-10	10-SPV-PA-GATS-0012	2.7 kW
L. Hake Residence	09-1800-EL-REN	1-13-10	10-SPV-PA-GATS-0013	3.8 kW
K. Small Residence	09-1801-EL-REN	1-13-10	10-SPV-PA-GATS-0014	5.5 kW
J. Smith Residence	09-1802-EL-REN	1-13-10	10-SPV-PA-GATS-0019	9.8 kW
D. Carpenter Residence	09-1910-EL-REN	1-7-10	10-SPV-OH-GATS-0010	4.8 kW

Facility Name	Case Number	Application Date	Certificate Number	Nameplate Capacity
Wyandot Solar LLC	09-521-EL-REN	9-9-09	09-SPV-OH-GATS-0002	Not available now
21st Century Solar	09-528-EL-REN	8-26-09	09-SPV-OH-GATS-0001	41 kW (DC)
Exelon-Epuron Solar Energy	09-611-EL-REN	1-7-10	10-SPV-PA-GATS-0001	Not available now
Crayola Solar	09-664-EL-REN	10-7-09	09-SPV-PA-GATS-0009	Not available now
Marcus Residence	09-671-EL-REN	9-9-09	09-SPV-OH-GATS-0003	6.3 kW (DC)
G. Checco Residence	09-701-EL-REN	1-7-10	10-SPV-OH-GATS-0003	5.4 kW
Solaris Blackstone Energy,	09-763-EL-REN	10-28-09	09-SPV-OH-GATS-0024	10.5 kW
Michel Residence	09-767-EL-REN	10-28-09	09-SPV-OH-GATS-0025	4.1 kW
DiPaola Residence	09-820-EL-REN	1-7-10	10-SPV-OH-GATS-0004	4.2 kW
METRO Regional Transit	09-826-EL-REN	12-9-09	09-SPV-OH-GATS-0067	134 kW
Univ. of Toledo – SP Campus	09-827-EL-REN	11-24-09	09-SPV-OH-GATS-0045	Not available 2009
McKeown Residence	09-837-EL-REN	10-28-09	09-SPV-PA-GATS-0026	26.2 kW
Downing Enterprises Inc.	09-840-EL-REN	10-28-09	09-SPV-OH-GATS-0027	44.8 kW
P. Williams Residence	09-850-EL-REN	10-28-09	09-SPV-PA-GATS-0028	18.2 kW
J. Alackness Residence	09-856-EL-REN	11-24-09	09-SPV-PA-GATS-0046	15.6 kW
Daniel Doyle Residence	09-858-EL-REN	10-28-09	09-SPV-PA-GATS-0029	7.6 kW
R&R PV Electric	09-879-EL-REN	10-28-09	09-SPV-PA-GATS-0032	4.0 kW
CSP – Athens Service Center	09-880-EL-REN	10-28-09	09-SPV-OH-GATS-0030	70.2 kW
OPC – Newark Service	09-881-EL-REN	10-28-09	09-SPV-OH-GATS-0031	69.1 kW
G. Bodnar Residence	09-884-EL-REN	1-7-10	10-SPV-PA-GATS-0005	3.2 kW
Bortz Residence	09-885-EL-REN	11-4-09	09-SPV-PA-GATS-0033	6.3 kW
Evergreen Lane Property	09-886-EL-REN	11-18-09	09-SPV-PA-GATS-0043	5.1 kW
Ralston Instruments, Inc.	09-888-EL-REN	12-9-09	09-SPV-OH-GATS-0068	33 kW
M. Glaser Residence	09-927-EL-REN	11-12-09	09-SPV-PA-GATS-0034	6.7 kW
J. Obelcz Residence	09-928-EL-REN	11-12-09	09-SPV-PA-GATS-0035	7.7 kW
G. Riedel Residence	09-929-EL-REN	12-9-09	09-SPV-OH-GATS-0065	90 kW
W. Sharp Residence	09-935-EL-REN	11-24-09	09-SPV-PA-GATS-0047	6 kW
G. Kemper Residence	09-936-EL-REN	11-12-09	09-SPV-PA-GATS-0036	7.7 kW
J. Vigilante Residence	09-937-EL-REN	11-12-09	09-SPV-PA-GATS-0037	7.2 kW
F. Harro Residence	09-939-EL-REN	11-12-09	09-SPV-PA-GATS-0038	5.4 kW

APPROVED APPLICATIONS [illegible]

Facility Name	[illegible] Number	Approval Date	Certification Number	[illegible] Capacity
Early Pine	09-940-EL-REN	11-12-09	09-SPV-PA-GATS-0039	24.8 kW
R. Coin Residence 1	09-942-EL-REN	1-7-10	10-SPV-OH-GATS-0006	2.5 kW
D. Auker Residence	09-945-EL-REN	11-12-09	09-SPV-PA-GATS-0040	13.5 kW
R. Coin Residence 2	09-948-EL-REN	1-7-10	10-SPV-OH-GATS-0007	2.4 kW
Sanderson Solar Array	09-956-EL-REN	11-12-09	09-SPV-KY-GATS-0041	11.2 kW
Lacey Electric, Inc.	09-959-EL-REN	1-7-10	10-SPV-PA-GATS-0008	64.3 kW
Doran Manufacturing PV	09-960-EL-REN	12-9-09	09-SPV-OH-GATS-0066	45 kW
J. Gibboney Residence	09-969-EL-REN	11-18-09	09-SPV-PA-GATS-0044	5.2 kW
P. Getchell Residence	09-982-EL-REN	11-24-09	09-SPV-PA-GATS-0048	8.2 kW
D. Lehman Residence	09-983-EL-REN	11-24-09	09-SPV-PA-GATS-0049	8.2 kW
D. Rhine Residence	09-986-EL-REN	11-24-09	09-SPV-PA-GATS-0050	10.5 kW
J. Mumper Residence	09-991-EL-REN	11-24-09	09-SPV-PA-GATS-0051	4.4 kW
J. Haldeman Residence	09-992-EL-REN	11-24-09	09-SPV-PA-GATS-0052	7.2 kW
M. Cooper Residence	09-998-EL-REN	11-24-09	09-SPV-PA-GATS-0053	4.6 kW