BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company For Approval of a Residential and Small Commercial Renewable Energy Credit Purchase Program Agreement	)))))	Case No. 10-262-EL-UNC

THE DAYTON POWER AND LIGHT COMPANY'S REPLY IN OPPOSITION TO COMMENTS OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Dayton Power and Light Company ("DP&L" or the "Company"), pursuant to Ohio Administrative Code ("OAC") Rule 4901-12(B)(1), hereby submits its reply to the Motion to Intervene and Comments of the Office of the Ohio Consumers' Counsel ("OCC"). DP&L does not oppose OCC's intervention. DP&L does oppose several aspects of OCC's comments and responds as follows:

I. Introduction.

The key element to DP&L's proposal is that it is structured to balance interests between the producers of Renewable Energy Credits ("RECs") and all other customers. DP&L's program is structured to purchase RECs using an approach that is both fair to the producers of the RECs and does not create excessive costs that would be borne by other customers. DP&L opposes those aspects of OCC's comments that appear to ignore cost consequences on other customers in favor of creating enhanced subsidies and excessive payments to producers of RECs.

In reviewing DP&L's application, the Commission should also recognize the non-exclusive nature of the proposal. REC producers, not DP&L, will have the choice to participate in DP&L's program or to sell their RECs in the market. This is a non-exclusive offer for DP&L to purchase under the specified terms and conditions. But if a particular REC producer truly wants some provision that varies from DP&L's program, the option remains to pursue that objective with a willing buyer of the RECs in the market. Thus, for example, if a REC producer wants a shorter term contract so that it can obtain potentially higher prices in the future, or if it wants a longer term contract to lock in prices over an extended period of time, the REC producer can seek an individualized contract with DP&L or any other market participant who needs RECs. The proposal here is merely establishing a balanced program that provides one option to a REC producer and is fair to all other customers.

II. Specific Comments in Reply to OCC.

A. Default Pricing.

OCC does not take issue with the way prices will be normally established for RECs, which is to set the price under this standard form agreement equal to the price of other similar RECs purchased that year by DP&L under other transactions. To recognize the slim, but larger than zero, chance that DP&L did not purchase any similar RECs in the particular year of contract formation, DP&L proposed a default price equal to 65% of the Alternative Compliance Payment provision set forth in Senate Bill 221. OCC opposes this 65% figure and proposes instead an 80% level based, citing a FirstEnergy program that the Commission approved where that figure is used as a default price. OCC Comments at 5.

The approval of the FirstEnergy program should not be viewed as precedent or authority in this proceeding. That program and the exact language of the form contract was a negotiated outcome set forth in a settlement agreement. *See* Letter Agreement and Resolution, FirstEnergy, Case Nos. 09-551-EL-REN, et al., paragraph 4 (July 28, 2009). Thus, when the Commission approved that contract, it was approving language that was the result of a negotiated outcome of several potentially interrelated issues where various parties may have agreed to certain provisions in return for other benefits obtained in other parts of the settlement. Additionally, as is the Commission's standard practice, the order approving the applications made in compliance with the settlement agreement noted that nothing in the order is binding on the Commission in any future proceeding. Finding and Order at 5, Case Nos. 09-551-EL-REN (Sept. 23, 2009). DP&L would object to having a default pricing provision that some other utility agreed to in a larger settlement being forced upon DP&L without any of the benefits that the rest of the settlement might have provided to First Energy.

The 65% default pricing level is a reasonable figure. The Alternative Compliance Payment level appears to have been established to be sufficiently high as to strongly encourage utilities to take steps to avoid it. DP&L would respectfully submit that setting a default price as close to that level as 80% may be excessive. In arguing for a higher REC price, OCC is arguing in favor of higher alternative energy compliance costs that will be charged to all ratepayers, including the residential customers that OCC represents.

B. Open to Shopping Customers.

OCC seeks clarification that the program be open to customers within DP&L's service area that purchase their generation from alternative suppliers. OCC Comment at 5.

This is not an element in dispute. DP&L intends that the program be available on an equal basis to customers irrespective of whether they purchase generation from DP&L or an alternative supplier.

C. Extended Term of 15 Years.

DP&L strongly opposes OCC's proposal that the term of the RECs purchase contract be extended to 15 years. OCC Comments at 6-7. DP&L has proposed a term of 5 years.

DP&L is not aware of any residential or small commercial REC producers within its service territory who are seeking long-term contracts. In fact, based on its current experience in trying to purchase RECs from such producers in 2009 and to date this year, many such producers are themselves hesitant to enter into long-term arrangements. This reluctance appears to be for one of two reasons: a) the producer has limited operating experience; and b) the producer believes that REC prices might be even higher in the future.

OCC speculates that a longer-term contract will provide a guaranteed revenue stream that will provide "sufficient financial means to incent the installation of the solar panels." OCC Comments at 7. That theory may have relevance in the context of a utility-scale project where bank financing might be obtained based on a business plan and cash flow projections backed up by an already executed purchase agreement. But the instant case involves small-scale installations that are either paid for up-front by the producer or financed through a finance agreement entered into primarily based on the producer's credit rating. It is also our understanding that most small scale solar installations have a pay-back period of about 5-years, so the proposed 5-year period is in-line with the pay-back period.

A longer term contract may result in higher alternative energy compliance costs. If large amounts of new RECs are generated by producers in the future, the market price of RECs may well decline. If DP&L were to enter into long term contracts at today's prices, it could be subject to a claim by some future OCC with a different policy agenda that DP&L overpaid for

RECs and that DP&L ratepayers were harmed. Thus, DP&L believes a five year contract term is an appropriate balance.[1]

OCC again references the First Energy program and its 15-year term. Again, that was the result of a settlement that the Commission explicitly held was non-binding in future cases. It provides no support here for imposing such a requirement on DP&L over its objections.

D. Availability Is Appropriately Limited Based on DP&L's Needs.

DP&L proposes that the amount of RECs that it will purchase will be capped so that it does not exceed the amount of RECs needed to meet DP&L's statutory obligations. While it appears unlikely that that cap would be reached any time in the near future, the cap acts to protect ratepayers in the event that there are dramatic shifts in either the supply of Ohio based RECs available or in load switching to CRES providers that would reduce DP&L's requirements to obtain RECs. In contrast, the OCC does not take a balanced approach and proposes that the purchase obligation be uncapped, creating at least the potential that other customers would pay for far more RECs than DP&L needs. OCC Comments at 7.

While OCC cites to general policy goals to promote distributed generation, there is no rational basis for requiring DP&L to purchase RECs in excess of its needs. That would be

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[1] Additionally, the history of long-term contracts mandated by government to provide incentives to entities pursuing socially-desirable goals should make any policy maker wary. The "avoided cost" rates and 30 year contracts that were mandated in many parts of the country to promote cogeneration and Small Power Production resulted in billions of dollars of excess payments made by utilities and their customers when power prices stayed low or fell from the projected levels used to set those avoided cost rates. *See, e.g., New York State Electric and Gas Corp.*, 71 FERC ¶61,027 at ft. 18 (1995), where NYSEG estimated that two such contracts would cost it in excess of $2 billion more than its true, then-current avoided cost. Similar filings were made before the FERC in the mid-1990s by numerous utility companies from California, New York and elsewhere. When California regulators and the Governor intervened directly to execute long-term purchase contracts beginning in 2001 in response to the Enron scandals and electric supply shortages, they were back before the FERC only a year later seeking to reject, amend or terminate them. *Complaint of California Electricity Oversight Board against Sellers of Energy and Capacity under Long-Term Contracts*, FERC Docket No. EL02-62-000 (filed Feb. 25, 2002). More recently, the high "feed-in" rates that Spain created to promote solar installations created an artificial boom that was followed by a disastrous bust after the program was over-subscribed. *See, e.g.,* http://www.nytimes.com/gwire/2009/08/18/18greenwire-spains-solar-market-crash-offers-a-cautionary-88308.html discussing Spain's program and noting that "In just one year of boom, the country committed itself to solar payments estimated at $26.4 billion, which in turn led to taxpayer backlash and bust."

contrary to any form of least cost planning, prudent purchasing practices, or the public interest generally. DP&L strongly opposes this OCC proposal which fails to recognize that unlimited subsidies paid to one group of customers means increased costs to all ratepayers including the residential customers that OCC represents.

OCC's secondary argument that any excess RECs can be banked overlooks the fact that the Alternative Compliance Payment decreases year by year. Purchasing excessive RECs in earlier years would likely mean purchases at higher costs than may be available in later years. Moreover, OCC offers no mechanism to ever stop purchasing an excessive amount. Under its proposal, excess REC purchases in 2011, could be followed by more excess purchases in 2012, followed by even more excess purchases after that – withdrawals from the "bank" might never occur. And since another part of the OCC proposal is to mandate 15-year terms, there would be no opportunity to reduce the excess purchases by letting older contracts expire.

E. Construction of New Facilities Will Not Result in Voided Contracts.

In its Comments at page 8, OCC appears to misunderstand how DP&L's proposed cap would operate with respect to pre-existing and new contracts in conjunction with utility-scale projects that DP&L has or may construct. DP&L's proposed cap would not affect already executed agreements with residential and small commercial customers. DP&L would continue to honor those agreements throughout the terms of the contracts. The cap would operate only to close availability to new entrants.

III. Conclusion.

The Dayton Power and Light Company, for the foregoing reasons, urges the Commission to reject the OCC's proposals in this proceeding and approve DP&L's form of agreement as submitted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served either electronically or via first class mail, postage prepaid, this 17th day of May, 2010 upon counsel to the parties of record.

Randall V. Griffin
Chief Regulatory Counsel
The Dayton Power and Light Company