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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service	)	Case No. 10-2586-EL-SSO

INITIAL POST-HEARING BRIEF OF OHIO ADVANCED ENERGY

I. INTRODUCTION

Ohio Advanced Energy ("OAE") intervened in this proceeding to address the need for Ohio utilities, such as Duke Energy Ohio ("DEO" or the "Company"), to enter into long-term contracts with renewable energy providers to ensure that the obligations of Ohio's renewable portfolio standard ("RPS"), set forth in Ohio Senate Bill 221, are met. Critical to this effort is the ability of DEO and other utilities to secure through proceedings such as this guaranteed recovery of the costs associated with long-term contracts.

As DEO itself acknowledges in its application for a market rate offer ("MRO")[1] and supporting testimony,[2] its current strategy of meeting the RPS benchmarks primarily through short-term renewable energy credit ("REC") purchases is unlikely to spur sufficient in-state investment to satisfy DEO's benchmarks as they increase over time. Entering into long-term

[1] *See* MRO Application ("Co. Ex. 3"), p. 30 (stating that a lack of guaranteed cost recovery encourages utilities to enter into short-term contracts, which in turn "restricts [renewable] investment in Ohio as commercial developers and competitive suppliers need the financial assurance associated with long-term contracts and commitments").

[2] *See* Direct Prefiled Testimony of Andrew S. Ritch ("Co. Ex. 9"), p. 9, lines 1-9 (stating that while DEO will continue to favor shorter term REC contracts, the company recognizes that as RPS compliance targets increase "multiple tactics will likely be needed" and "it may be necessary to supplement [shorter term REC contracts] with longer term transactions to adequately assure that the compliance targets are met").

contracts, on the other hand, would encourage renewable energy development in Ohio and increase the likelihood that the Company will continue to meet the increasing RPS benchmarks. As the Company has made clear in this proceeding, however, only with the assurance of long-term cost recovery would it be willing to enter into long-term contracts.[3]

For these reasons, and as further explained below, the Public Utilities Commission of Ohio (the "Commission") should allow DEO to recover the costs associated with long-term contracts coterminous with the contracts themselves, *i.e.*, for as long as the contracts are in effect. More broadly, the Commission should use all tools available to remove regulatory risk associated with long-term cost recovery in Ohio.

II. STATEMENT OF THE CASE

A. OAE: Ohio's Advanced Energy Trade Association

OAE is the premier Ohio-based business trade association advocating on behalf of the advanced and renewable technology industries. OAE is composed of companies and organizations working in the areas of wind power, solar power and other advanced energy technologies. OAE's members are interested in the development and expansion of renewable energy resources in DEO's service territory and the state as a whole.

B. Procedural History

On November 15, 2010, DEO filed an Application for approval of a MRO to conduct a competitive bidding process ("CBP") for its SSO electric generation supply beginning in June 2011. On December 7, 2010, OAE filed a motion to intervene in the case. OAE was granted intervention by Entry of Attorney Examiner Katie L. Stenman dated December 13, 2010. Evidentiary hearings were held in the case from January 11, 2011 through January 19, 2011. OAE participated in the evidentiary hearing and presented the testimony of one expert witness,

[3] *See* Tr. Vol. II, p. 282, lines 11-12.

Mr. Kevin Helmich, Director of Origination for Iberdrola Renewables, Inc. ("IRI").[4] Mr. Helmich's testimony focused on the need for load serving entities, such as DEO, to enter into long-term contracts with wind energy providers to promote renewable energy development in the State of Ohio and ensure that utilities are meeting their obligations under Ohio's RPS. Mr. Helmich recommended that the Commission remove regulatory risk for DEO associated with long-term cost recovery and, specifically, to allow DEO to recover the costs of long-term contracts over the entire life of the contracts.

III. LEGAL ARGUMENT

DEO acknowledges that its current strategy of pursuing short-term REC purchases to comply with Ohio's RPS will be unlikely to ensure continued compliance as the benchmarks increase over time. The Company has also noted that one of the main drivers of its current strategy is the absence of guaranteed cost recovery for long-term contracts, which is discouraging renewable energy investment in the State of Ohio. That lack of investment, in turn, will only further complicate DEO's efforts to comply with the RPS through short-term, spot-market REC purchases. The Commission, therefore, should remove the regulatory risk associated with long-term contracts by authorizing DEO to recover the costs associated with long-term contracts coterminous with the contracts themselves, *i.e.*, for as long as the contracts are in effect. Allowing long-term cost recovery will: 1) help ensure DEO's continued ability to comply with the renewable benchmarks in Ohio's RPS; and 2) encourage renewable energy development in Ohio and support the policy objectives of Senate Bill 221.

A. Allowing long-term cost recovery will help ensure DEO's continued compliance with the renewable benchmarks in Ohio's RPS.

[4] *See generally* OAE Ex. 1.

Without guaranteed cost recovery for long-term contracts, DEO is likely to continue to favor a short-term RPS compliance strategy that will make it increasingly difficult for the Company to comply with the renewable benchmarks as they increase over time. The Commission should allow for the recovery of costs associated with long-term renewable contracts to help ensure DEO's continued compliance with Ohio's RPS.

The Company's RPS compliance strategy of short-term REC contracts has, according to DEO, "balanced the Company's intent of statutory compliance with economical purchases, the costs of which are passed on to customers."[5] The short-term strategy is "largely a function of the uncertainty associated with long-term cost recovery . . . ."[6] The Company's short-term strategy will likely become less effective, however, as the RPS requirements increase over time, according to Mr. Andrew Ritch, Director of Renewable Strategy and Compliance for Duke Energy Business Services LLC. As the benchmarks increase, Mr. Ritch testified that DEO's primary risk will be that the "requisite number" of RECs are not "available in the marketplace."[7] Going forward, "multiple tactics will likely be needed" and "it may be necessary to supplement [short-term REC contracts] with longer term transactions to adequately assure that the compliance targets are met."[8]

Long-term contracts have the additional benefit of reducing the administrative burden[9] on the Company by eliminating the need to continually survey the REC market for potential transactions. Long-term contracts would "streamline and ease [the Company's] ability to

[5] Co. Ex. 3, p. 30.

[6] *Id.*

[7] Tr. Vol. II, p. 279, lines 17-19.

[8] Co. Ex. 9, p. 9, lines 1-9.

[9] *Id.*

comply" with the RPS,[10] which would ultimately lower the costs that must be borne by ratepayers. For these reasons, the Commission should guarantee long-term cost recovery for DEO for the costs associated with long-term renewable contracts through Rider AERR (alternative energy recovery rider) proposed in its MRO application.[11]

B. Allowing long-term cost recovery will encourage renewable energy development in Ohio and support the policy objectives of Senate Bill 221.

The strategy of DEO and other utilities to comply with Ohio's RPS through short-term contracts is hindering renewable energy development in Ohio, as recognized by the Company itself in its MRO application. The Commission should allow recovery of the costs associated with long-term renewable contracts to spur renewable energy development and support the policy objectives of Senate Bill 221.

The uncertainty surrounding long-term cost recovery is encouraging utilities, including DEO, to satisfy their RPS obligations through short-term transactions. "This, in turn," according to the Company's MRO application, "restricts investment in Ohio as commercial developers and competitive suppliers need the financial assurance associated with long-term contracts and commitments."[12] The ability to enter into long-term contracts, on the other hand, "would provide much greater assurance to developers . . . to begin to look at projects to be sited" in Ohio.[13]

OAE witness Helmich further explained the negative effect of short-term transactions on renewable energy development, specifically wind development, in Ohio. Financing a commercial-scale wind farm "depends on investor confidence in the availability of a long-term

[10] Tr. Vol. II, p. 280, lines 24-25.

[11] Co. Ex. 9, p. 10, lines 9-12.

[12] Co. Ex. 3, p. 30.

[13] Tr. Vol. II, p. 283, lines 21-25.

revenue stream, lasting at least ten (10) years, to cover the substantial upfront costs."[14] In today's environment, Helmich explained, "wind energy investments that cannot demonstrate an assurance of capital recovery to their investors are becoming increasingly difficult to finance."[15] Ideally, a contract should last for at least twenty (20) years, which "enables developers to get the most favorable rate on the debt needed to finance a wind farm" and lowers the cost for rate-payers.[16]

To the extent practicable, the Commission should also encourage utilities to enter into so-called "bundled contracts" that include both energy and RECs. Because "[e]nergy accounts for a significant portion of a wind farm's revenue . . . it is imperative to demonstrate to wind farm investors that a long-term buyer is in place to provide this meaningful portion of a project's revenue."[17] The Company's current RPS compliance strategy of relying on short-term, unbundled, REC-only contracts does not "sufficiently encourage wind energy development in Ohio."[18] As explained by Mr. Helmich, REC markets "are very thin and illiquid" and "have proven to be highly volatile," with prices rising and falling dramatically and unpredictably.[19] Ultimately, "this volatility creates additional uncertainty, raises costs to consumers, and inhibits development of new renewable generation."[20]

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[14] OAE Ex. 1, p. 2, lines 17-19.

[15] *Id.*, lines 23-25.

[16] OAE Ex. 1, p. 3, lines 24-27.

[17] OAE Ex. 1, p. 2, lines 32-35.

[18] OAE Ex. 1, p. 3, lines 5-6.

[19] *Id.*, lines 12-15.

[20] *Id.*, lines 19-20.

The Commission should follow the recommendations of Mr. Helmich and authorize DEO to recover the costs associated with long-term contracts coterminous with the contracts themselves, *i.e.*, for as long as the contracts are in effect.[21] Given the likely lower costs of long-term contracts, such cost recovery could be performed under the RPS three (3) percent cost cap and would ultimately be cheaper for rate-payers.[22] To the extent practicable, the Commission should also encourage DEO to enter into bundled contracts for energy and RECs to further encourage renewable development.

IV. CONCLUSION

For the reasons set forth above, OAE respectfully requests that the Commission guarantee long-term cost recovery for DEO for the costs associated with long-term renewable energy contracts through the proposed Rider AERR.

Respectfully submitted,

Christopher Montgomery
Terrence O'Donnell
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
Ph: (614) 227-2300
cmontgomery@bricker.com
todonnell@bricker.com

Attorneys for Ohio Advanced Energy

[21] OAE Ex. 1, p. 4, lines 12-14.

[22] *Id.*, lines 16-18.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the parties of record listed below this 27th day of January 2011 *via* electronic mail.

Christopher Montgomery

Amy B. Spiller
Associate General Counsel
Elizabeth H. Watts
Assistant General Counsel
Rocco O. D'Ascenzo
Senior Counsel
Duke Energy Business Services
139 East Fourth Street, 1313-Main
Cincinnati, OH 45202

John W. Bentine
Mark Yurick
Matthew S. White
Chester, Wilcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213
jbentine@cwslaw.com
myurick@cwslaw.com
mwhite@cwslaw.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

Michael D. Dortch
Kravitz, Brown & Dortch, LLC
65 East State Street, Suite 200
Columbus, OH 43215
mdortch@kravitzllc.com

Ann M. Hotz
Kyle L. Verrett
Jody M. Kyler
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
hotz@occ.state.oh.us
verret@occ.state.oh.us
kyler@occ.state.oh.us

William T. Reisinger
Nolan Moser
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
will@theoec.org
nolan@theoec.org
trent@.theoec.org

Samuel Randazzo
Joseph Oilker
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
joliker@mwncmh.com

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

David A. Kutik
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour, and Pease LLP
52 East Gay Street
PO Box 1008
Columbus, OH o 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Grant W. Garber
Jones Day
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-2673
gwgarber@jonesday.com

Mary Christensen
Counsel for People Working Cooperatively, Inc.
8760 Orion Place, Suite 300
Columbus OH 43240
mchristensen@columbuslaw.org

Barth E, Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215
barthrover@aol.com

Gary A. Jeffries
Senior Cotmsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212
Gary.A.Jeffries@dom.com

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
tobrien@bricker.com

Douglas E. Hart
Attorney for The Greater
Cincinnati Health Council
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasehart.com

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
drinebolt@ohiopartners.org
cmooney2@columbus.rr.com

Cynthia Fonner Brady
Senior Counsel
Constellation Energy Resources LLC
550 W. Washington St., Suite 300
Chicago, IL 60661
Cynthia.brady@constellation.com

Steven Beeler
John Jones
Assistant Attorneys General
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Steven,beeler@puc.state.oh.us
John.jones@puc.state.oh.us

Richard Chamberlain
Behrens, Wheeler & Chamberlain
6 N.E. 63rd Street, Suite 400
Oklahoma City, OK 73105
rdc_law@swbell.net

Kevin J. Osterkamp
Roetzel & Anderss, LPA
155 E. Broad Street, 12th Floor
Columbus, OH 43215
kosterkamp@ralaw.com

Anne M. Vogel, Attorney for
AEP Retail Energy Partners LLC
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
amvogel@aep.com

Matthew J. Satterwhite
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com

Matt Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
mwarnock@bricker.com

Kevin Schmidt
The Ohio Manufacturers' Association
33 N. High St., Suite 600
Columbus, OH 43215
kschmidt@ohiomfg.com