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. 10-0508-EL-ACP**

Findings and Recommendations of the PUCO Staff

I. Statutory Background

Senate Bill 221, with an effective date of July 31, 2008, established Ohio's alternative energy portfolio standard (AEPS) applicable to electric distribution utilities and electric services companies. The AEPS is addressed principally in sections 4928.64 and 4928.65, Ohio Revised Code (ORC), with relevant resource definitions contained within 4928.01(A), ORC.

Pursuant to 4928.64(B)(2), ORC, the specific compliance obligations for 2009 are as follows:

- Renewable Energy Resources = 0.25% (includes solar carve-out)
- Solar Energy Resources = 0.004%

In addition, there is a requirement that at least half of the renewable energy resources, including the solar energy resources, shall be met through facilities located in this state.

The PUCO further developed rules to implement the Ohio AEPS, with those rules contained within Ohio Administrative Code (OAC) 4901:1-40.

4901:1-40-05(A), OAC:

> Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, an annual alternative energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks and planning requirements have or will be met. Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.

4901:1-40-05(C), OAC:

> Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.

II. Company Filing Summarized

In its filing, Duke Energy Retail Sales LLC (DERS) indicated that it did not have any electric sales in Ohio during the period of 2006 to 2008 but that it did have such sales in 2009. Therefore, rather than relying on historical sales data to determine its baseline, DERS proposed a baseline of 934,540 megawatt-hours (MWHs) based on its projected sales volumes for 2009.[1] DERS asserts that its approach is consistent with the requirements in 4901:1-40-03(B)(2)(b), OAC.

With its proposed baseline and the 2009 statutory benchmarks, DERS computed its 2009 compliance obligation as 38 solar MWHs (at least 19 MWHs of which must come from in-state facilities) and 2,299 non-solar[2] MWHs (of which at least 1,150 MWHs must come from in-state facilities).[3]

DERS concludes in its filing that it fully satisfied the non-solar portion of its 2009 compliance obligation. With respect to the solar obligation, DERS indicates that it did not secure any solar renewable energy credits (S-RECs).[4] DERS requested a *force majeure* determination in Case No. 10-0509-EL-ACP to address its shortfall of 38 S-RECs, a request that was granted by the Commission.[5]

DERS' filing includes a footnote[6] addressing the 3% "cost cap" that indicated the following:

> "DERS submits that its reasonably expected cost of renewable and solar energy benchmark compliance for 2009 greatly exceeded its reasonably expected cost of

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[1] P. 3 of DERS filing

[2] Staff uses "non-solar" in this context to refer to the total renewable requirement net of the specific solar carve-out. Staff acknowledges that there is not a specific "non-solar" requirement in the applicable statute.

[3] P. 4 of DERS filing

[4] P. 5 of DERS filing

[5] Finding and Order dated February 23, 2011

[6] Footnote 2, on p. 2 of DERS filing

> otherwise producing or acquiring the requisite electricity by far more than three percent."

Subsequent communications with DERS on this topic, however, indicate that the footnote was inadvertently included.

DERS also requested in its filing[7] 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 requirements applicable to DERS."

III. Filed Comments

The Ohio Environmental Council (OEC) and the Environmental Law & Policy Center (ELPC) submitted motions to intervene in this proceeding. The OEC and ELPC also submitted joint-comments.[8] The OEC/ELPC comments focused largely on DERS' request for a *force majeure* determination, an issue that was subsequently addressed by the Commission. The OEC/ELPC comments also stressed that self-generation of S-RECs should not be ignored by DERS as a compliance option.[9] OEC/ELPC further recommended that DERS' filing in response to 4901:1-40-03, OAC, be supplemented when additional information becomes available.[10]

IV. Staff Findings

Following its review of the annual status report and any timely comments submitted in this proceeding, Staff makes the following findings:

(1) DERS is an electric services company in Ohio with retail electric sales in the state of Ohio, and therefore DERS has an AEPS compliance obligation for 2009.

(2) DERS submitted its annual status report for 2009 compliance activities on April 15, 2010.

(3) The projected baseline proposed by DERS is not unreasonable.

[7] P. 10 of DERS filing

[8] OEC/ELPC comments filed on May 17, 2010.

[9] P. 3 of OEC/ELPC comments

[10] P. 4 of OEC/ELPC comments

(4) DERS accurately computed its 2009 compliance obligations, given its projected baseline and the 2009 statutory obligations.

(5) Staff requested and received details on the non-solar RECs that DERS proposed to use to satisfy its 2009 non-solar compliance obligation. This information indicates that DERS satisfied its total non-solar obligation for 2009, as well as the specific in-state non-solar requirement. The information further indicates that these non-solar RECs originated from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2009.

(6) DERS is currently awaiting direction as to how it should formally surrender or retire these particular non-solar RECs.

(7) DERS did not secure or generate any S-RECs towards its 2009 solar obligation. It sought and received a *force majeure* determination pertaining to its 2009 solar obligation. Consistent with the Commission decision in Case No. 10-0509-EL-ACP, Staff finds that DERS complied with its revised solar obligation for 2009.

V. Staff Recommendations

Following its review of the information submitted in this proceeding, Staff recommends the following:

(1) Staff recommends that DERS be found to be in compliance with its 2009 non-solar compliance obligation and its revised solar obligation.

(2) Staff recommends that DERS transfer the 1,150 Ohio non-solar RECs and 1,149 non-solar RECs from adjacent states, as detailed in the information provided to Staff, to its GATS reserve subaccount for Ohio compliance purposes. Staff will review the details of this transfer for confirmation.

(3) Staff recommends that DERS' 2010 compliance benchmark include an additional 38 S-RECs, of which at least 19 should come from certified in-state facilities, consistent with the Commission's ruling on the DERS *force majeure* request in Case No. 10-0509-EL-ACP.