

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of DPL )  
Energy Resources Inc. for an Amendment )  
of the 2009 Solar Energy Resource ) Case No. 09-2006-EL-ACP  
Benchmark, Pursuant to Section )  
4928.64(C)(4), Ohio Revised Code. )

FINDING AND ORDER

The Commission finds:

- (1) DPL Energy Resources Inc. (DPLER) is an electric services company as defined in Section 4928.01(A)(9), Revised Code.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric services companies to acquire a portion of their electricity supply for retail customers in Ohio from renewable energy resources. Specifically, the statute requires that, for 2009, a portion of the electricity sold by means of retail electric sales in Ohio must come from alternative energy resources, including 0.004 percent from solar energy resources (SER), half of which must be met with resources located within Ohio. This requirement increases to 0.010 percent for 2010.
- (3) On December 30, 2009, DPLER filed an application pursuant to Section 4928.64(C)(4), Revised Code, requesting that the Commission make a *force majeure* determination regarding the Ohio portion of DPLER's 2009 SER benchmark. DPLER asserts that it was only able to acquire approximately 36 percent of the solar renewable energy credits (SRECs) necessary to meet the Ohio portion of its 2009 SER benchmark (in-state SER benchmark). Consequently, DPLER requests that the Commission modify DPLER's 2009 in-state SER benchmark by the amount of DPLER's actual shortfall at the end of 2009.
- (4) Motions to intervene in the above-captioned case were filed by the Ohio Environmental Council (OEC) and the Environmental Law and Policy Center (ELPC). No party

opposed the motions to intervene. The Commission finds that the motions to intervene are reasonable and should be granted.

- (5) In support of its request for a *force majeure* determination, DPLER represents that, despite its substantial good faith efforts, it was unable to achieve compliance with its 2009 in-state SER benchmark due to lack of sufficient solar energy resources available for purchase. DPLER notes that, provided all of the applications for certification of renewable energy resource generating facilities pending before the Commission are approved, it has achieved compliance with both the non-solar renewable energy resource benchmarks as well as its overall 2009 SER benchmark.

DPLER avers that, in an effort to satisfy its 2009 SER benchmark, it pursued all reasonable options, including SREC solicitations, purchases, building projects, partnering with customers, cold calling project owners and developers, and competitive bidding on long-term contracts. Specifically, DPLER states that, in July 2009, it issued a Request for Proposal (RFP) seeking SRECs but that, regarding Ohio SERs, the RFP resulted in only one offer for four Ohio SRECs per year over a five-year period. Further, DPLER relates that, in July and September 2009, it submitted competitive, but unsuccessful, bids to purchase 288 Ohio SRECs from two Ohio-based sources. Finally, DPLER relates that, in August 2009, it conducted a mass-mailing to 128 Ohio residents who received grant awards for small (less than 20 kW) solar projects in an effort to purchase SRECs but that some residents refused to sell their SRECs in anticipation of receiving a higher price through other programs or bidders.

DPLER concludes that, despite its good faith efforts to comply, it was only able to purchase approximately 36 percent of its 2009 in-state SER requirement. DPLER surmises that, based on its significant efforts to purchase Ohio SRECs, there is currently an insufficient supply of Ohio solar resources from which DPLER can purchase SRECs to achieve full compliance with its 2009 in-state SER benchmark.

- (6) On March 26, 2010, OEC and ELPC (jointly, the environmental advocates) filed joint comments in opposition to DPLER's request for a *force majeure* determination. The environmental advocates argue that, because DPLER did not meet its SER benchmark, DPLER should be subjected to the alternative compliance payment as set forth in Section 4928.64(C)(2), Revised Code. The environmental advocates acknowledge that DPLER did not ignore its SER obligations but argue that the Commission should deny DPLER's request for a *force majeure* on the basis that DPLER did not expend the appropriate effort to ensure compliance with its 2009 benchmarks. Specifically, the environmental advocates assert that DPLER was aware of its 2009 SER requirements on or before July 31, 2008, but did not begin to seek SRECs until July 2009. Additionally, the environmental advocates argue that DPLER could have expended more efforts to meet the 2009 SER requirements by constructing its own solar facility or developing a formal residential solar purchase program. Further, the environmental advocates claim that DPLER's application suggests that DPLER and Dayton Power and Light Company (DP&L) conducted joint efforts to locate SERs but that DPLER does not appear to be sharing in DP&L's SERs currently under construction.

Alternatively, the environmental advocates argue that, should the Commission grant DPLER's request for a *force majeure*, DPLER should be required to recover any waived portion of the 2009 SER benchmark in 2010, just as the 2010 SER benchmarks for Columbus Southern Power Company and Ohio Power Company (jointly, AEP-Ohio) and DP&L were increased when the companies' requests for *force majeure* determinations of their 2009 SER benchmarks were granted.<sup>1</sup> The environmental advocates argue that this precedent requires an increase in DPLER's SER 2010 benchmark by the 149 SRECs it failed to obtain in 2009.

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<sup>1</sup> See *In the Matter of the Application of Columbus Southern Power Company for Amendment of the 2009 Solar Energy Resource Benchmark*, Pursuant to Section 4928.64(C)(4), Ohio Revised Code, Case No. 09-987-EL-EEC, et al., Entry (January 7, 2010); and *In the Matter of the Application of The Dayton Power and Light Company for Approval of a Force Majeure Determination for a Portion of the 2009 Solar Energy Resources Benchmark Requirement Pursuant to Section 4928.64(C)(4) of the Ohio Revised Code*, Case No. 09-1989-EL-ACP, Finding and Order (March 17, 2010).

- (7) On April 7, 2010, DPLER filed reply comments indicating that it would not object to a ruling by the Commission requiring DPLER to recover any waived portion of the 2009 SER benchmarks in 2010. However, DPLER's comments generally dispute the environmental advocates' assertions and specifically dispute the assertion that DPLER failed to obtain 149 SRECs in 2009. DPLER argues that the environmental advocates' figure is incorrect in light of the fact that DPLER cannot state with certainty how many 2009 SRECs it will ultimately receive. DPLER explains that the uncertainty is due to the existence of 2009 SRECs under contract that have not yet been delivered because some of the sellers have not yet filed with the Commission or registered with GATS or because the Commission has not yet acted on some filings. Consequently, DPLER requests that the Commission's order more generically state that any shortfall shall be added to the 2010 benchmark.
- (8) Upon review of the application and the other filings in this proceeding, and recognizing the limited time available for the development of new SERs to meet the statutory standard in its first year, the Commission finds that DPLER's request for a *force majeure* determination 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 service company's compliance with the statutory benchmarks. The statute further provides that the Commission shall consider the electric service company'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., and the Midwest Independent Transmission System Operator.

The Commission notes that DPLER attempted to accomplish its goal of purchasing sufficient SRECs by soliciting SRECs, purchasing SRECs, engaging in building projects, partnering with customers, cold calling project owners and developers, and bidding competitively on long-term contracts. While DPLER's efforts enabled it to obtain compliance with its overall 2009 SER benchmark,

DPLER was only able to acquire approximately 36 percent of its 2009 in-state SER benchmark. Additionally, DPLER asserts that there was an insufficient supply of Ohio solar resources from which it could purchase SRECs to meet its 2009 in-state SER benchmark. The Commission recognizes that its certification process for SRECs was in its infancy in 2009 and, as such, a limited number of SRECs were available. Further, as pointed out by DPLER, the Commission has already recognized that electric utilities had difficulty meeting their 2009 SER benchmarks.

Consequently, we find that there was an insufficient quantity of solar energy resources reasonably available in the market and that DPLER has presented sufficient grounds for the Commission to reduce DPLER's 2009 SER benchmark to the level of SRECs actually obtained by DPLER. Further, pursuant to Section 4928.64(C)(4)(c), Revised Code, our approval of DPLER's request for a *force majeure* determination is contingent upon DPLER meeting its revised 2010 SER benchmarks, which shall be increased to include the shortfall of its 2009 SER benchmark.

It is, therefore,

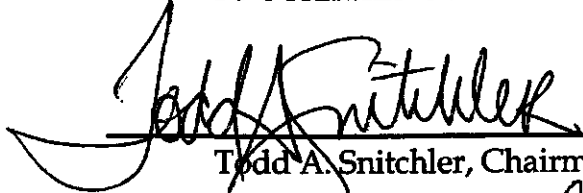
ORDERED, That the motions to intervene filed by OEC and ELPC be granted.  
It is, further,

ORDERED, That DPLER's request for a *force majeure* determination be granted.  
It is, further,

ORDERED, That DPLER's 2010 SER benchmark be increased as set forth in finding (8). 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

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

  
Valerie A. Lemmie

  
Steven D. Lesser

  
Cheryl L. Roberto

MLW/sc

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Renee J. Jenkins  
Secretary