

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of Duke Energy Retail)
Sales, LLC's 2010 Annual Alternative)
Energy Portfolio Status Report)**

Case No. 11-2517-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 service 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.

According to 4928.64(B)(2), ORC, the specific compliance obligations for **2010** are as follows:

- Renewable Energy Resources = 0.50% (includes solar requirement)
- Solar Energy Resources = 0.010%

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.

The findings and recommendations in this document pertain to the company's compliance status. This document does not address such matters as cost recovery or status relative to the statutory 3% cost provision.

II. Company Filing Summarized

Duke Energy Retail Sales, LLC (DER or Company) filed a redacted annual status report, along with a motion for protective order. A Commission Attorney Examiner subsequently issued an Entry denying the request for confidential treatment, thereby moving the annual status report to the public file.¹

DER proposed a baseline of 1,743,286 megawatt-hours (MWHs). According to DER, it did not have any Ohio retail electric sales in 2007 or 2008, and therefore it asserted that its baseline should consist of its 2009 sales. With its proposed baseline and the statutory benchmarks, DER calculated its 2010 compliance obligations to be the following:

- 174 Solar MWHs, of which at least 87 must originate from Ohio sources
- 8,542 Non-Solar² MWHs, of which at least 4,721 must originate from Ohio sources

In addition, DER noted a solar shortfall from 2009 that was rolled forward and added to its 2010 compliance obligation.³ Adding this shortfall results in a total 2010 solar obligation of 212 MWHs, of which at least 106 must originate from Ohio facilities.

DER indicated that it had secured sufficient renewable energy credits (RECs) to satisfy its compliance obligations. Such RECs are maintained in DER's Generation Attributes Tracking System (GATS) account, and they requested Commission direction as to the retirement of the RECs.⁴

¹ Entry dated May 26, 2011

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 Second Finding and Order; Case No 10-0509-EL-ACP; April 19, 2011

⁴ Annual status report, p. 4

III. Filed Comments

No persons filed comments in this proceeding.

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) That DER is an electric services company in Ohio with retail electric sales in the state of Ohio, and therefore DER had an AEPS compliance obligation for 2010.
- (2) That DER filed its annual status report for 2010 AEPS compliance activities on April 15, 2011.
- (3) That DER appropriately calculated its baseline and 2010 compliance obligation.
- (4) That, based on REC and S-REC details provided to Staff, DER has adequate RECs and S-RECs to satisfy its 2010 total and in-state compliance obligations, including its solar shortfall from 2009.
- (5) That following a review of the REC and S-REC details provided by DER, Staff confirmed that the specific RECs and S-RECs that the Companies identified for 2010 compliance were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2010.
- (6) That DER has not to date transferred the applicable RECs and S-RECs to its GATs reserve subaccount.

V. Staff Recommendations

Following its review of the information submitted in this proceeding and other relevant data, Staff recommends the following:

- (1) That the Commission find that DER has sufficient RECs and S-RECs to satisfy its 2010 AEPS compliance obligations, including the solar shortfall from 2009.
- (2) That DER transfer the 8,542 RECs and 212 S-RECs to its GATS reserve subaccount for Ohio compliance purposes. Such transfer should occur within 30 days of the Commission's final decision in this proceeding. Staff will review the

details of this transfer for confirmation and to ensure consistency with the data previously provided to Staff. Compliance is contingent upon such transfer.

- (3) That for future compliance years in which DER is utilizing GATS to demonstrate its Ohio compliance efforts, DER initiate the transfer of the appropriate RECs and S-RECs to its GATS reserve subaccount between March 1st and April 15th so as to precede the filing of its Ohio annual compliance status report with the Commission.

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Summary: Staff Review and Recommendation electronically filed by Mr. Stuart M Siegfried on behalf of PUCO Staff