

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company, and The Toledo	)	
Edison Company for Approval of a Force	)	Case No. 09-1922-EL-ACP
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.	)	

FINDING AND ORDER

The Commission finds:

- (1) Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (TE) (collectively, FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric utilities to acquire a portion of the electric utility's standard service offer from renewable energy resources. Specifically, the statute provides that, for 2009, a portion of the electric utility's electricity supply for its standard service offer must come from alternative energy sources, including 0.004 percent from solar energy resources (SER); this requirement increases to 0.010 percent for 2010.
- (3) On December 8, 2010, as corrected on March 9, 2010, FirstEnergy filed an application, requesting that the Commission make a force majeure determination regarding its 2009 SER benchmark and reduce the three electric utilities' aggregate SER benchmark to the level of solar renewable energy credits (SRECs) actually obtained by FirstEnergy.
- (4) Motions to intervene in this proceeding have been filed by the Ohio Environmental Council (OEC), the Environmental Law and Policy Center (ELPC), Industrial Energy Users-Ohio (IEU-Ohio),

Ohio Energy Group (OEG) and the Office of the Ohio Consumers' Counsel (OCC), Citizen Power, Inc. (Citizen Power), The Vote Solar Initiative, and The Solar Alliance.

No party opposed the motions to intervene. The Commission finds that the motions to intervene are reasonable and should be granted.

- (5) On February 26, 2010, a motion for admission *pro hac vice* was filed on behalf of Theodore S. Robinson. The Commission finds that this motion is reasonable and should be granted.
- (6) In its application, FirstEnergy claims that, in the stipulation approved by the Commission in its electric security plan (ESP) proceeding, the signatory parties agreed that, as authorized by Section 4928.65, Revised Code the Companies' renewable energy resource requirements for the period of January 1, 2009, through May 31, 2011, would be met using an RFP process to obtain renewable energy credits (RECs). *In re FirstEnergy*, Case Nos. 08-935-EL-SSO, et al., Second Opinion and Order (March 25, 2009) at 9. FirstEnergy claims that it requires an aggregate 1,885 SRECs to meet its 2009 SER benchmark. Each SREC is equivalent to 1 MWh of electricity derived from solar energy resources.

FirstEnergy represents that it sponsored two separate RFPs for SRECs. These RFPs were managed by Navigant Consulting, Inc., (NCI). FirstEnergy states that NCI solicited SRECs from both facilities within Ohio and resources in states contiguous to Ohio. Banked SRECs were eligible for the solicitations provided they were produced after July 31, 2008. NCI conducted the first RFP in July 2009 and received no bids for SRECs. NCI conducted the second RFP in September 2009 and received bids for 49 SRECs, all from resources in states contiguous to Ohio. No bids for SRECs were received from facilities located in Ohio. FirstEnergy agreed to purchase all SRECs offered; however, this resulted in a per company deficit of SRECs needed to satisfy the 2009 SER benchmark of 814 for OE, 669 for CEI and 353 for TE.

FirstEnergy argues that the limited number of SREC bidders is consistent with the market availability of SRECs in Ohio and contiguous states. According to FirstEnergy, as of July 2009, there was less than 1 MW of solar generation capacity installed in Ohio, some of which was already committed to long-term contracts or

efforts to reduce the owners' existing carbon footprints. Further, FirstEnergy claims that there is less than 5 MW of solar generation presently available in contiguous states.

Finally, FirstEnergy represents that it considered the potential of long-term contracts as a compliance option. However, NCI determined that there were no long-term contracts available to meet the 2009 SER benchmark.

- (7) On March 9, 2010, OCC, OEC, ELPC, Citizen Power, The Vote Solar Initiative, and The Solar Alliance filed comments in opposition to FirstEnergy's application.
- (8) Upon review of the application and the other filings in this proceeding and recognizing the limited time available for the development of new solar energy resources to meet the statutory standard in its first year, the Commission finds that FirstEnergy's application 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 utility's compliance with the statutory benchmarks. The statute further provides that the Commission shall consider the electric utility'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., or the Midwest Independent Transmission System Operator.

The Commission notes that FirstEnergy conducted two RFPs through a third-party RFP manager and did not obtain sufficient SRECs to meet its 2009 benchmark. FirstEnergy also established a residential REC purchase program to encourage residential customers to install renewable energy resources, including solar power. Under this program, FirstEnergy will purchase RECs generated from a customer's approved renewable energy project over a 15-year contract term. However because the program was not effective until late 2009, it has not generated SRECs with a 2009 vintage. FirstEnergy further explored long term contracts and determined that no long term contracts were available to meet the 2009 SER benchmark. Moreover, FirstEnergy represents that there were insufficient solar resources installed in Ohio to meet its 2009 SER benchmark.

Therefore, we find that there was an insufficient quantity of solar energy resources reasonably available in the market and that FirstEnergy has presented sufficient grounds for the Commission to reduce the three electric utilities' aggregate 2009 SER benchmark to the level of SRECs acquired through FirstEnergy's 2009 RFP process. The Commission also notes that, although the stipulation in the ESP proceeding envisions that FirstEnergy's renewable energy resource requirements will be met using an RFP process to obtain RECs, FirstEnergy is responsible for meeting the statutory SER benchmarks through all means available, if the RFP proves not to be a viable means to meet the statutory requirement. Further, pursuant to Section 4928.64(C)(4)(c), Revised Code, our approval of FirstEnergy's application is contingent upon FirstEnergy meeting revised 2010 SER benchmarks, which shall be increased to include the shortfall for the 2009 SER benchmarks.

- (9) Furthermore, pursuant to the entry issued on November 12, 2009, in Case No. 08-888-EL-ORD, the Commission finds that this case, which was originally docketed as Case No. 09-1922-EL-EEC, is more appropriately docketed with the ACP purpose code, as it specifically addresses alternative energy portfolio compliance. Accordingly, Case No. 09-1922-EL-EEC should be designated as Case No. 09-1922-EL-ACP.

It is, therefore,

ORDERED, That FirstEnergy's application, as corrected, be granted. It is, further,

ORDERED, That FirstEnergy's 2010 SER benchmarks be increased as set forth in Finding (8). It is, further,

ORDERED, That the motions to intervene filed by OEC, ELPC, IEU-Ohio, OEG, OCC, Citizen Power, The Vote Solar Initiative, and The Solar Alliance be granted. It is, further,

ORDERED, That the motion for admission *pro hac vice* submitted on behalf of Theodore S. Robinson be granted. 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



Alan R. Schriber, Chairman



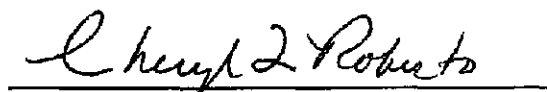
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

GAP/dah

Entered in the Journal

**MAR 10 2010**



Renee J. Jenkins  
Secretary