

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the Application of)
RESA for an Amendment to the) Case No. 10-428-EL-ACP
2009 Solar Energy Resource Benchmark)
Pursuant to R.C. Section 4928.64(C)(4))

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**APPLICATION FOR A FORCE MAJEURE DETERMINATION
and
Request for Expedited Review**

Now comes the Retail Electric Supply Association (RESA), a trade association of retail electric and natural gas suppliers.¹ Several of RESA's members are certificated competitive retail electric service providers (CRES) who are active in the Ohio electric market and have made retail electric generation sales in Ohio in 2009. As such, the RESA CRES² providers will have to submit on or before April 15, 2010 a Renewable Energy Report for calendar year 2009. In that Report, all CRES providers who have made retail sales in calendar year 2009 pursuant to Rule 4901:1-40-03 will have to either certify that they have purchased Solar Renewable Energy Credits ("S-RECs") in an amount equal to .004% of their baseline sales or pay a penalty.³ For the reasons detailed below, RESA believes that S-RECs were not only unavailable for the electric distribution companies of FirstEnergy Corp. and American Electric Power to meet 2009

¹ RESA's members include ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Business, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² Constellation NewEnergy, Inc.; Direct Energy Business, LLC; Gexa Energy; Integrys Energy Services, Inc. and Sempra Energy Solutions LLC.

³ See Section 4928.64(B)(2), Revised Code. The S-REC benchmark is set at .004% of baseline sales, half of which must be met with resources located within the State of Ohio.

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requirements, but also were unavailable for the RESA CRES providers. Further, for the policy and equity reasons detailed in the numbered paragraphs below, RESA urges that the S-REC requirements for 2009 be postponed, as opposed to waived, and integrated into the 2010 S-REC reporting period.

In further support of its application, RESA states as follows:

1. That all certificated RESA CRES providers meet the definition of "electric services company" as that term is defined in Section 4928.01(A)(9), Revised Code.

2. Section 4928.64(B), Revised Code, requires all electric services companies to provide a portion of their electricity supply for retail customers in Ohio from alternative energy resources, including a specific requirement that a portion of the renewable energy portfolio include solar power. Further, the Commission rules require that for purposes of verification, compliance with the S-REC requirement be documented by use of S-RECs registered with an approved registry which tracks generation from solar facilities which have previously received a renewable energy certificate from the Commission.

3. Pursuant to Section 4928.64(B)(2), Revised Code and Rule 4901:1-40-03(A)(2) of the Ohio Administrative Code, all CRES providers must have S-RECs equal to .004% of all their Ohio kilowatt-hours baseline sales half of which must be from facilities located within the State of Ohio.

4. Section 4928.65, Revised Code, and Rule 4901:1-40-04(D) of the Ohio Administrative Code permits the use of renewable energy credits including S-RECs at any time in the five calendar years following the date of their purchase or acquisition for the purpose of complying with the renewable energy and solar energy resource requirements of Section 4928.64(B)(2), Revised Code.

5. For the past year and a half, the Commission has conducted a rulemaking proceeding in Case No. 08-888-EL-ORD to develop rules implementing the S-REC statutory requirement. These rules recently became effective on December 10, 2009.

6. No S-REC market with sufficient liquidity exists, and few S-RECs are available through bilateral contracts.

7. The Commission on January 7, 2010 in Case No. 09-987-EEC determined that a *force majeure* condition existed as to the availability of S-RECs in the Ohio Power Company and Columbus Southern Power Company service areas. The Commission granted a waiver to these two utilities whose service territories cover southeastern and central Ohio from meeting the 2009 S-RECs, on condition that the S-RECs for 2009 are made up in 2010 as presented in the Renewable Energy Report due no later than April 15, 2011. The Commission's market monitoring website indicates that during calendar year 2009, CRES made retail sales in the Columbus Southern Power service area and thus face the same unavailability of S-RECs that Columbus Southern Power experienced.

8. The Commission on March 10, 2010 in Case No. 09-1922-EL-ACP determined that a *force majeure* condition existed as to the availability of S-RECs for the Cleveland Electric Illuminating Company, The Ohio Edison Company, and the Toledo Edison Company service areas. The Commission granted a waiver to these three utilities whose service territories cover the northern third of Ohio, from meeting the 2009 S-RECs, on condition that the S-RECs for 2009 are made up by the time of the 2010 renewable energy report. The Commission's market monitoring website indicates that CRES providers accounted for a significant proportion of the retail sales of these three companies during calendar year 2009. Thus, CRES providers

experienced the same dearth of S-RECs experienced by the FirstEnergy utilities which led the Commission to declare a *force majeure*.

9. RESA states that its members face the same inability to obtain S-RECs as the five utilities covered by the *force majeure* findings made by the Commission.

10. In addition, RESA notes that a review of the Commission's own statistics as to the issuance of S-RECs supports the conclusion that S-RECs for 2009 simply were not available.

11. Attached as Exhibit A to this petition and incorporated herein is a chart showing all the facilities, both in Ohio and outside of Ohio, for whom the Commission has issued a Renewable Energy certificate as of March 28, 2010. Projects known not to be on line for 2009 based on information contained in public filings, are listed on Exhibit A as being unavailable. The sum of the solar generation capacity for all certificated solar facilities deliverable into Ohio as demonstrated by Exhibit A is a mere 1.092 MW of capacity. Assuming that all of the listed projects were available for every clock hour in 2009, which is highly unlikely, and an optimistic assumption of 25% capacity for a solar facility in Ohio and the surrounding states, the maximum MWh that could have been generated for 2009 would less than 3,000 MWh.⁴ The Commission website lists total utility sales alone in Ohio at over 116 million MWh. Compliance with the rule would require entities to acquire roughly twice the number of S-RECs available – once again assuming all of the facilities listed were available for every clock hour of the year and were not under contract for delivery in another state.

12. Since the 2009 requirement for S-RECs is only 4 thousandths of one percent, many CRES providers will not have an S-REC obligation of a megawatt hour, which is the size of an S-REC. It would be inequitable to make small suppliers have to carry a significantly larger

⁴ Each S-REC consists of one MWh.

S-REC obligation than the utilities simply because the Commission Rule 4901:1-40-08 requires rounding up to the nearest S-REC. Combining reporting years 2009 and 2010 would help alleviate this barrier for smaller suppliers.

13. Section 4928.64(C)(4)(a), Revised Code empowers the Commission to make a *force majeure* determination with respect to all suppliers ability to meet their Ohio solar power requirement. The Commission is further permitted, pursuant to Section 4928.64(C)(4)(c) and Rule 4901:1-40-06 of the Ohio Administrative Code to modify electric service company compliance obligation to accommodate a finding that S-RECs are not reasonably available. Given the lack of operating solar facilities which have been certified at this time, the Commission should grant the RESA CRES providers the same type of compliance postponement granted to the operating utilities of American Electric Power and FirstEnergy Corp.

14. The Commission as of this writing has over 275 facilities in the queue which claim the capability of solar generation. Thus, it may be possible for electric service providers to meet a 2010 S-REC requirement.

15. In addition to the Commission's previous findings of *force majeure* for Columbus Southern Power (Case No. 09-987-EL-EEC) and Ohio Power Company (Case No. 09-988-EL-EEC), and Toledo Edison, Ohio Edison and Cleveland Electric Illuminating (Case Nos. 09-1922-EL-EEC), there are *force majeure* petitions pending before the Commission from the Dayton Power and Light Company, (Case No. 09-1989-EL-ACP), and its CRES affiliate DPL Energy Resources, Inc. (Case No. 09-2006-EL-ACP).

16. RESA on behalf of its CRES members further requests a waiver, pursuant to Rule 4901:1-40-02(B) of the Ohio Administrative Code, of any requirement of Chapter 4901:1-40 necessary in granting the relief requested in this application.

17. In light of the fact that the 2009 renewable energy reports are due on April 15, 2010, RESA requests the Commission expedite its review of this petition and grant relief on an expedited basis.

WHEREFORE, RESA respectfully requests that the Commission approve this application and issue a Finding and Order, pursuant to Section 4928.64(C)(4), Revised Code, and Rule 4901:1-40-06 of the Ohio Administrative Code, waiving the S-RECs requirement for all CRES for calendar year 2009, and increasing the REC requirement for 2010 to include a number of S-RECs equal to baseline sales for both calendar years 2009 and 2010 by April 15, 2011.

Respectfully submitted,

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EL-REN : Solar Applications – Exhibit A

APPROVED APPLICATIONS				
Facility Name	Case Number	Approval Date	Certification Number	Generating Capacity
D. D'Angelo Residence	09-1027-EL-REN	12-2-09	09-SPV-PA-GATS-0055	36 kW
L. Hollish Residence	09-1028-EL-REN	12-2-09	09-SPV-PA-GATS-0056	9 kW
J. Leichter Residence	09-1029-EL-REN	12-16-09	09-SPV-PA-GATS-0071	5.1 kW
D. Miller Residence	09-1030-EL-REN	12-9-09	09-SPV-PA-GATS-0060	4.4 kW
J. Neary Residence	09-1031-EL-REN	12-2-09	09-SPV-PA-GATS-0057	5.3 kW
D. Platt Residence	09-1032-EL-REN	1-13-10	10-SPV-PA-GATS-0018	3.1 kW
G. Schappell Residence	09-1033-EL-REN	12-9-09	09-SPV-PA-GATS-0061	2.1 kW
K. Senecal Residence	09-1034-EL-REN	12-2-09	09-SPV-PA-GATS-0058	8.1 kW
C. Tourtellot Residence	09-1035-EL-REN	12-9-09	09-SPV-PA-GATS-0062	2 kW
P. Yost Residence	09-1038-EL-REN	1-7-10	10-SPV-OH-GATS-0009	6.8 kW
E. Roberts Solar Array	09-1049-EL-REN	12-16-09	09-SPV-KY-GATS-0081	3.33 kW
J. Blais Residence	09-1072-EL-REN	12-16-09	09-SPV-PA-GATS-0070	5.3 kW
D. Bunnell Residence	09-1073-EL-REN	12-16-09	09-SPV-PA-GATS-0076	8.4 kW
M.J. Comey Residence	09-1074-EL-REN	12-16-09	09-SPV-PA-GATS-0077	19.2 kW
G. Eby Residence	09-1075-EL-REN	12-16-09	09-SPV-PA-GATS-0078	5.7 kW
K. Edleman Residence	09-1076-EL-REN	12-16-09	09-SPV-PA-GATS-0069	4.8 kW
K. Erdman Residence	09-1077-EL-REN	12-16-09	09-SPV-PA-GATS-0072	7.2 kW
D. Hoover Residence	09-1078-EL-REN	12-16-09	09-SPV-PA-GATS-0073	9 kW
B. Lindsey Residence	09-1079-EL-REN	12-16-09	09-SPV-PA-GATS-0074	6 kW
M. Rubinger Residence	09-1080-EL-REN	12-16-09	09-SPV-PA-GATS-0075	10.4 kW
Croatian Solar Array	09-1084-EL-REN	1-13-10	10-SPV-KY-GATS-0015	9.2 kW
Bennett Solar Array	09-1085-EL-REN	1-13-10	10-SPV-KY-GATS-0016	3.4 kW
A. Bragoli Residence	09-1098-EL-REN	1-13-10	10-SPV-PA-GATS-0011	5.4 kW
W. Ealey Residence	09-1099-EL-REN	1-13-10	10-SPV-PA-GATS-0012	2.7 kW
L. Hake Residence	09-1800-EL-REN	1-13-10	10-SPV-PA-GATS-0013	3.8 kW
K. Small Residence	09-1801-EL-REN	1-13-10	10-SPV-PA-GATS-0014	5.5 kW
J. Smith Residence	09-1802-EL-REN	1-13-10	10-SPV-PA-GATS-0019	9.8 kW
D. Carpenter Residence	09-1910-EL-REN	1-7-10	10-SPV-OH-GATS-0010	4.8 kW

APPROVED APPLICATIONS				
Facility Name	Case Number	Approval Date	Certification Number	Generating Capacity
Wyandot Solar LLC	09-521-EL-REN	9-9-09	09-SPV-OH-GATS-0002	Not available now
21 st Century Solar	09-528-EL-REN	8-26-09	09-SPV-OH-GATS-0001	41 kW (DC)
Exelon-Epuron Solar Energy	09-611-EL-REN	1-7-10	10-SPV-PA-GATS-0001	Not available now
Crayola Solar	09-664-EL-REN	10-7-09	09-SPV-PA-GATS-0009	Not available now
Marcus Residence	09-671-EL-REN	9-9-09	09-SPV-OH-GATS-0003	6.3 kW (DC)
G. Checco Residence	09-701-EL-REN	1-7-10	10-SPV-OH-GATS-0003	5.4 kW
Solaris Blackstone Energy,	09-763-EL-REN	10-28-09	09-SPV-OH-GATS-0024	10.5 kW
Michel Residence	09-767-EL-REN	10-28-09	09-SPV-OH-GATS-0025	4.1 kW
Dipaola Residence	09-820-EL-REN	1-7-10	10-SPV-OH-GATS-0004	4.2 kW
METRO Regional Transit	09-826-EL-REN	12-9-09	09-SPV-OH-GATS-0067	134 kW
Univ. of Toledo – SP Campus	09-827-EL-REN	11-24-09	09-SPV-OH-GATS-0045	Not available 2009
McKeown Residence	09-837-EL-REN	10-28-09	09-SPV-PA-GATS-0026	26.2 kW
Downing Enterprises Inc.	09-840-EL-REN	10-28-09	09-SPV-OH-GATS-0027	44.8 kW
P. Williams Residence	09-850-EL-REN	10-28-09	09-SPV-PA-GATS-0028	18.2 kW
J. Alackness Residence	09-856-EL-REN	11-24-09	09-SPV-PA-GATS-0046	15.6 kW
Daniel Doyle Residence	09-858-EL-REN	10-28-09	09-SPV-PA-GATS-0029	7.6 kW
R&R PV Electric	09-879-EL-REN	10-28-09	09-SPV-PA-GATS-0032	4.0 kW
CSP – Athens Service Center	09-880-EL-REN	10-28-09	09-SPV-OH-GATS-0030	70.2 kW
OPC – Newark Service	09-881-EL-REN	10-28-09	09-SPV-OH-GATS-0031	69.1 kW
G. Bodnar Residence	09-884-EL-REN	1-7-10	10-SPV-PA-GATS-0005	3.2 kW
Bortz Residence	09-885-EL-REN	11-4-09	09-SPV-PA-GATS-0033	6.3 kW
Evergreen Lane Property	09-886-EL-REN	11-18-09	09-SPV-PA-GATS-0043	5.1 kW
Ralston Instruments, Inc.	09-888-EL-REN	12-9-09	09-SPV-OH-GATS-0068	33 kW
M. Glaser Residence	09-927-EL-REN	11-12-09	09-SPV-PA-GATS-0034	6.7 kW
J. Obelcz Residence	09-928-EL-REN	11-12-09	09-SPV-PA-GATS-0035	7.7 kW
G. Riedel Residence	09-929-EL-REN	12-9-09	09-SPV-OH-GATS-0065	90 kW
W. Sharp Residence	09-935-EL-REN	11-24-09	09-SPV-PA-GATS-0047	6 kW
G. Kemper Residence	09-936-EL-REN	11-12-09	09-SPV-PA-GATS-0036	7.7 kW
J. Vigilante Residence	09-937-EL-REN	11-12-09	09-SPV-PA-GATS-0037	7.2 kW
F. Harro Residence	09-939-EL-REN	11-12-09	09-SPV-PA-GATS-0038	5.4 kW

APPROVED APPLICATIONS				
Facility Name	Case Number	Approval Date	Certificate Number	Generating Capacity
Early Pine	09-940-EL-REN	11-12-09	09-SPV-PA-GATS-0039	24.8 kW
R. Coin Residence 1	09-942-EL-REN	1-7-10	10-SPV-OH-GATS-0006	2.5 kW
D. Auker Residence	09-945-EL-REN	11-12-09	09-SPV-PA-GATS-0040	13.5 kW
R. Coin Residence 2	09-948-EL-REN	1-7-10	10-SPV-OH-GATS-0007	2.4 kW
Sanderson Solar Array	09-956-EL-REN	11-12-09	09-SPV-KY-GATS-0041	11.2 kW
Lacey Electric, Inc.	09-959-EL-REN	1-7-10	10-SPV-PA-GATS-0008	64.3 kW
Doran Manufacturing PV	09-960-EL-REN	12-9-09	09-SPV-OH-GATS-0066	45 kW
J. Gibboney Residence	09-969-EL-REN	11-18-09	09-SPV-PA-GATS-0044	5.2 kW
P. Getchell Residence	09-982-EL-REN	11-24-09	09-SPV-PA-GATS-0048	8.2 kW
D. Lehman Residence	09-983-EL-REN	11-24-09	09-SPV-PA-GATS-0049	8.2 kW
D. Rhine Residence	09-986-EL-REN	11-24-09	09-SPV-PA-GATS-0050	10.5 kW
J. Mumper Residence	09-991-EL-REN	11-24-09	09-SPV-PA-GATS-0051	4.4 kW
J. Haldeman Residence	09-992-EL-REN	11-24-09	09-SPV-PA-GATS-0052	7.2 kW
M. Cooper Residence	09-998-EL-REN	11-24-09	09-SPV-PA-GATS-0053	4.6 kW