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BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of )  
FirstEnergy Solutions Corp. For )  
Approval of its Alternative Energy ) Case No. 10-467-EL-ACP  
Annual Status Report and for an )  
Amendment of its 2009 Solar Energy )  
Resources Benchmark Pursuant to R.C. )  
§ 4928.64(C)(4)(a) )

I. INTRODUCTION

Pursuant to Rule 4901:1-40-05 of the Ohio Administrative Code ("O.A.C."), FirstEnergy Solutions ("FES") submits its Annual Status Report ("Report") for the period January 1, 2009 through December 31, 2009 ("Reporting Period"). This Report addresses FES's compliance with the alternative energy portfolio benchmarks set forth in R.C. § 4928.64(B)(2) for the Reporting Period.

FES is in compliance with its statutory non-solar Alternative Energy Portfolio Standard ("AEPS") requirements for 2009. Further, FES complied with the requirements of R.C. § 4928.64(B)(3) and achieved exactly half of its requirements from in-state facilities with the other half coming from facilities located in adjacent states. As demonstrated below and in the exhibits to this Report, FES met its requirements by obtaining Renewable Energy Credits ("RECs").

Despite its best efforts, FES fell short of meeting its solar AEPS by 58 Solar Renewable Energy Credits ("SRECs"). FES obtained 96% (146/152) of the in-state SRECs that it needed to comply with its benchmark.<sup>1</sup> FES found it more difficult to comply with its adjacent state SREC

<sup>1</sup> FES does not believe that the in-state requirement for solar resources is supported by R.C. § 4928.64, and is aware of arguments that an in-state resource requirement is unconstitutional. Regardless, FES has attempted in good faith to satisfy all provisions of the Commission's rules.

requirement, obtaining 66% (100/152) of the SRECs that it needed to comply with its benchmark. Accordingly, along with this Annual Status Report, FES is requesting a force majeure determination from the Commission pursuant to R.C. § 4928.64(C)(4)(a).

## **II. COMPLIANCE WITH 2009 BENCHMARKS**

O.A.C. 4901:1-40-05(A) requires that each electric utility and electric services company file “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.” O.A.C. 4901:1-40-05(A) also requires that the Commission Staff conduct an annual compliance review of the electric utility or electric services company’s compliance with benchmarks under the alternative energy portfolio standard.

R.C. 4928.64(B)(2) and O.A.C. 4901:1-40-03(A) contain the alternative energy benchmarks applicable to electric services companies such as FES. By 2025, FES must provide twenty-five percent of its electricity from alternative energy resources. R.C. § 4928.64(B). Half of the twenty-five percent must be supplied from renewable energy resources. R.C. § 4928.64(B)(2). The law further requires that at least one-half percent of the twenty-five percent must be supplied from solar energy resources by 2025. *Id.* The law sets annual benchmarks for both renewable energy and solar energy. *Id.* For 2009, FES was required to supply 0.25% of its electricity supply from renewable energy resources and 0.004% of its electricity supply from solar energy resources. *Id.* The Commission’s rules require that at least one half of the renewable and solar energy resources implemented by FES must be met through facilities located in Ohio, while the remainder shall be met with resources that can be shown to be deliverable into Ohio. O.A.C. 4901:1-40-03(A)(2)(a).

The FES baseline, as defined in Section 4901:1-40-03(B)(2), and renewable requirements for the year 2009 under the Ohio AEPS are shown in the table immediately below. The Company's baseline is 7.58 million MWh based on the average of the Company's Retail Sales in the prior three years (2006-08). The renewable requirements are based on the total Ohio AEPS 2009 renewable requirement equal to 0.25% of the baseline. The table below also demonstrates the number of RECs that FES needed to obtain to meet its benchmarks.

Baseline (Million mwh)	7.58
REC Requirements (%)	
Non Solar:	
In-State	0.123%
Adj State	0.123%
Solar:	
In-State	0.002%
Adj State	0.002%
REC Requirements (# RECs)	
Non Solar:	
In-State	9,327
Adj State	9,327
Solar:	
In-State	152
Adj State	152

#### A. Non-Solar Benchmark

FES was able to meet one hundred percent of its non-solar Ohio AEPS compliance obligations in 2009. The Company acted diligently and proactively to procure RECs from existing renewable resources located within the borders of the state of Ohio to demonstrate compliance with the in-state portion of the compliance obligation. RECs from the 277 MW of Pennsylvania wind power that FES has under a long-term renewable power purchase agreement

were used to demonstrate compliance with the adjacent state portion. Exhibit 1 (In State) and Exhibit 2 (Adjacent State) to this Report provide details on the specific RECs that were retired to demonstrate compliance.

## **B. Solar Benchmark**

While FES took all reasonable steps to comply fully with its solar Ohio AEPS compliance obligations, it was unable to achieve one hundred percent compliance. However, as demonstrated in its request for a force majeure determination below, the inability to comply was due to the lack of sufficient solar renewable resources that were qualified as renewable resources under the Ohio AEPS. FES was required to obtain 152 in-state solar renewable energy credits (“SRECs”) and 152 adjacent state SRECs in order to comply with the applicable requirements. FES obtained 146 out of the required 152 in-state SRECs, with the vast majority being realized from a five-year purchase agreement that it signed with a Toledo-based entity. FES also was able to purchase 100 of the 152 required adjacent state SRECs from a third-party SREC aggregator. Thus, despite a lack of sufficient solar renewable resources, FES was able to obtain 81% of the SRECs that it needed to meet its benchmark. Exhibit 3 (In State) and Exhibit 4 (Adjacent State) to this Report provide details on the specific SRECs that were obtained and retired towards the Company’s compliance requirement.

### **III. REQUEST FOR FORCE MAJEURE DETERMINATION**

Pursuant to R.C. § 4928.64(C)(4)(a), FES hereby requests that the Commission make a force majeure determination regarding compliance with its 2009 solar energy resources ("SER") benchmark. The SER benchmark is set out in R.C. § 4928.64(B)(2) and mandates that 0.004% of FES's electricity supply in 2009 be generated from solar energy resources.

FES has made aggressive efforts to meet its SER benchmark but such efforts have not been successful for reasons beyond its control and through no fault of its own. There simply were not sufficient solar resources available for purchase by FES either from facilities located within Ohio or from resources deliverable into Ohio. FES confirmed this lack of supply by diligently contacting the largest solar energy producers in Ohio and seeking SRECs from those producers.<sup>2</sup> Thus, FES requests that the Commission act pursuant to R.C. § 4928.64(C)(4) to reduce, because of force majeure, FES's SER benchmark to the level of SRECs it purchased in 2009.

#### **A. Force Majeure Standard**

Ohio Revised Code section 4928.64(C)(4)(c) requires that if the Commission determines that the necessary solar resources "are not reasonably available" to meet the 2009 SER benchmark, the Commission shall modify that compliance obligation as appropriate. In order for the Commission to consider waiving or deferring the 2009 SER benchmark, it must determine that FES made "a good faith effort to acquire sufficient ... solar energy resources to so comply,

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<sup>2</sup> Further evidence of the lack of sufficient solar resources is set forth in the force majeure applications of Columbus Southern Power Company and Ohio Power Company in Case Nos. 09-987-EL-EEC and 09-988-EL-EEC, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company in Case No. 09-1922-EL-EEC, and by the Retail Electric Supply Association in Case No. 10-428-EL-ACP.

including, but not limited to, by banking or seeking renewable energy resource credits or by seeking the resources through long-term contracts.” *Id.* § 4928.64(C)(4)(b). As demonstrated below, FES made such a good faith effort to acquire a sufficient number of SRECs to meet the 2009 SER benchmark.

**B. Solar Renewable Energy Credits Were Not Reasonably Available to FES**

FES proactively and aggressively attempted to purchase SRECs to demonstrate compliance with its 2009 SER benchmark. In the fourth quarter of 2008, while the rules implementing the requirements of R.C. § 4828.64 were still being debated, FES attempted to enter into a long-term renewable power purchase agreement with the developer of a solar array in Highland County, Ohio, in an attempt to meet its 2009 solar requirements. The Company and the developer were unable to reach agreement in time for a utility-scale solar resource to be built and placed into service in 2009. FES attempted the same project again in mid-2009, but it was once again unable to reach an agreement. In both attempts, one of the uncertainties preventing the parties from entering into a long-term agreement was the lack of a clear and final set of rules.

Beginning in early 2009, FES contacted the owners of the four largest known solar generators within the state of Ohio to discuss bilateral purchase agreements for their Solar RECs. FES contacted a solar generator which was unaware its facility qualified for SRECs prior to its meetings with FES, but responded by conducting an RFP that was subsequently won by a separate company, despite FES’s offer to help it build two more arrays. FES also contacted an Ohio college and an Ohio military base, but both entities repeatedly indicated that they did not intend to register or sell their SRECs. A Toledo-based customer responded favorably and, after an RFP process, FES was selected and therefore able to obtain its SRECs under a 5-year purchase agreement.

Even with this purchase agreement, the Company was unable to obtain sufficient SRECs to demonstrate compliance with its SER benchmark due to the limited time period to comply and the short supply of qualified solar renewable resources. The Company attempted to contact all brokers, aggregators and generators to discuss spot purchases for any remaining SRECs. The Company was able to procure ninety SRECs from an SREC aggregator that bundles and sells small individual volumes of SRECs. In addition, the Company purchased two SRECs from a homeowner in southern Ohio.

Because of these efforts and successes, FES was able to obtain 81% of the SRECs that it needed to meet its 2009 benchmark. The remaining difference is due to the lack of sufficient solar renewable resources that were qualified as renewable resources under the Ohio AEPS in 2009. The lack of resources, in turn, was due in part to the lack of clear and final rules for the bulk of 2009, which hampered the development of solar projects in 2009.

Therefore, FES respectfully requests that the Commission (i) make a force majeure determination regarding its 2009 SER benchmark and (ii) reduce its 2009 SER benchmark to the level of SRECs that FES acquired in 2009.

#### IV. CONCLUSION

As demonstrated above, FES achieved full compliance with the 2009 renewable energy benchmark in R.C. § 4928.64(B)(2). While FES was unable to achieve full compliance with the SER benchmark in the same statute, its inability was due to circumstances beyond its control. Accordingly, the Commission should grant FES's force majeure request and reduce its 2009 SER benchmark.

Respectfully submitted,

/s/ Mark A. Hayden / N.T.A. 0080713

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ATTORNEYS FOR APPLICANT,  
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**Exhibit 1**

**REDACTED**

**Exhibit 2**

**REDACTED**

**Exhibit 3**

**REDACTED**

**Exhibit 4**

**REDACTED**