

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Application of Ohio |) | |
| Edison Company, the Cleveland Electric |) | |
| Illuminating Company and the Toledo |) | |
| Edison Company for Approval of Request |) | Case No. 10-2891-EL-ACP |
| For Proposal to Purchase Renewable Energy |) | |
| Credits through Ten-year Contracts |) | |

Comments Submitted on behalf of PUCO Staff

On December 2, 2010, Ohio Edison, Toledo Edison, and Cleveland Electric Illuminating Company (“Applicants”) filed an application for approval of request for proposal to purchase renewable energy credits (RECs) through ten year contracts.

On December 22, 2010, Nucor Steel Marion, Inc. filed a motion to intervene, memorandum in support, and comments proposing clarification and/or modification.

On February 25, 2011, the Attorney Examiner issued an entry in this proceeding establishing a procedural schedule as follows:

- (a) The deadline for the filing of comments on the Companies' application shall be March 18, 2011.
- (b) The deadline for all parties to file reply comments shall be March 28, 2011.
- (c) The deadline for the filing of motions to intervene shall be April 11, 2011.

Staff timely submits the following comments consistent with the schedule outlined by the Attorney Examiner in this proceeding.

STAFF COMMENTS

The Application in this proceeding stems from the Second Supplemental Stipulation filed in Case No. 10-388-EL-SSO on July 22, 2010. This Second Supplemental Stipulation was included within the Commission's consideration when it subsequently approved the Combined Stipulation in Case 10-388-EL-SSO, with modifications, in its Opinion and Order dated August 25, 2010.

In their application in Case No. 10-2891-EL-ACP the Applicants included three primary requests, each of which is presented below.

Request No. 1: The Applicants seek approval for the first RFP to seek competitive bids to purchase through ten year contracts: (a) the annual delivery of 5,000 PUCO-certified solar RECs originating in Ohio, with a delivery period between June 1, 2011 and December 31, 2020, and (b) the annual delivery of 20,000 non-solar PUCO-certified RECs originating in Ohio, with a delivery period between June 1, 2011 and December 31, 2020.¹

Staff believes that this initial request is consistent with the terms in the Second Supplemental Stipulation from Case No. 10-388-EL-SSO. Staff has no comments on this specific request at this time, other than to clarify that the Commission does not technically certify RECs. Rather, the Commission certifies eligible renewable energy resource generating facilities with the understanding that qualified RECs from such certified facilities are considered viable compliance tools for purposes of Ohio's alternative energy portfolio standard. Such clarification is embodied within the definition of "Renewable Energy Credit or REC"² in the proposed Purchase and Sale Agreement for Renewable Energy Credits that was attached as Appendix A to the Companies' application.

Request No. 2: The Applicants seek approval for recovery of all reasonable costs associated with acquiring the RECs through the aforementioned 10 year contracts, including the costs associated with administering the RFP, irrespective of the Companies' need for the RECs to meet their statutory requirement. Such costs are proposed to be recovered each year in which the RECs are delivered including any period for reconciliation, irrespective of the date the RECs may be retired.³

¹ P. 2 of Application

² P. 5 of Appendix A to the Application

³ P. 2-3 of Application

Staff believes that most of the components of this second request are consistent with the terms in the Second Supplemental Stipulation in Case No. 10-388-EL-SSO. However, Staff questions the language on p. 2 of the Application that indicates the following:

(ii) approve the recovery of all reasonable costs associated with acquiring RECs through the Purchase and Sale Agreement for Renewable Energy Credits attached hereto as Appendix A (the “Agreement”) for the full ten year period (with any additional period necessary for reconciliation), **irrespective of the Companies’ need for RECs to meet their statutory requirement**, and approve recover of such costs associated with administering the REC RFP; ...”

The “irrespective of the Companies’ need for RECs” language appears potentially inconsistent with language from Section A.11(d) of the Second Supplemental Stipulation that indicates as follows:

The applications will seek Commission approval for the long term RFPs. Such RFP shall provide that should the Companies determine prior to entering into contracts that the Companies do not require those RECs to meet the requirements of R.C. § 4928.64, or that the purchase of those RECs would cause the Companies to exceed the cost cap set forth in R.C. § 4928.64(C)(3), then the Companies will not be required to purchase those RECs.

Staff believes that rather than an inconsistency, that this may simply represent a difference in timing. Staff interprets the “irrespective of Companies’ need for RECs”⁴ to pertain to the concept of immediate need, in that the RECs that are obtained via RFP and for which cost recovery is sought may not need to be immediately surrendered or retired for compliance purposes. Such RECs could be banked for use in a future compliance year, for instance. However, the cost recovery would be sought when the RECs are delivered and payment is rendered. Such an interpretation differs significantly from a determination that the Applicants have no need for the RECs.

Staff proposes that, with the application in this proceeding as well as any future applications filed in conjunction with the proposed REC RFPs in the Second Supplemental Stipulation, the Applicants file details describing how they intend to perform the assessments referenced in Section A.11(d) of the Second Supplemental Stipulation – specially, the assessment of their immediate and longer-term need for the

⁴ P. 2 of Application

RECs, including solar RECs, sought under the RFP and their status relative to the 3% cost cap as set forth in § 4928.64(C)(3), ORC.

Request No. 3: The Applicants request that reasonable costs associated with the RFP, including the costs of acquiring RECs and administering the RFP, be recovered through Rider AER or such other rider that shall be established to effectuate the recovery of such costs.⁵

The Staff believes that the AER is an appropriate mechanism for the recovery of reasonable costs associated with securing RECs through the proposed RFP process, should the Commission grant such recovery.

In its comments, Nucor Steel Marion Inc (Nucor) suggests that Rider AER should not be the mechanism for recovering costs associated with the REC RFP. Instead, Nucor advocates a new rider to address the cost recovery associated with the REC RFP. Nucor argues that, rather than Rider AER which would assign costs on a per kWh basis, a new rider should be utilized to “ ... recover these costs on a more appropriate basis (such as by customer) ...”.⁶ In support of its position, Nucor asserts that “... the ten year REC RFP costs will be fixed costs and not energy-related costs that will vary based on kWh usage ...”.⁷

Because FirstEnergy intends to seek a REC-only product thru the RFP, as opposed to a bundled product consisting of RECs and energy and capacity, Nucor further argues that, “ ... treating these costs as energy through use of a uniform per kWh energy charge such as Rider AER is inconsistent with cost-causation, and could result in over-recovery of the ten year REC costs from the higher load factor customer classes, and from individual customers with high level of kWh usage.”⁸

While Nucor prefers recovery on a per customer basis (with a customer charge), Nucor would seemingly also support recovery of RFP REC costs “ ... from the customer classes consistent with how PJM capacity costs are allocated and recovered under the ESP Stipulation.”⁹

⁵ P. 3 of Application

⁶ P. 4 of Nucor comments

⁷ P. 4 of Nucor comments

⁸ P. 8 of Nucor comments

⁹ P. 8 of Nucor comments

Nucor concludes that, “Either of these alternatives would be a more reasonable and fair way of allocating and recovering the costs of the ten year RECs than simply passing the costs through the AER Rider.”¹⁰

Staff does not agree with the position put forth by Nucor regarding the appropriate cost recovery mechanism. To the contrary, Staff believes that recovery of the REC costs on a per kWh basis is completely consistent with cost-causation in this context. The alternative energy portfolio standard (AEPS) introduced by Senate Bill 221¹¹ is based entirely on sales volumes to determine the respective compliance obligations.

Ohio Revised Code (ORC) Section 4928.64(B), when talking about the overall scope of the AEPS, indicates as follows:

That portion shall equal twenty-five per cent of the **total number of kilowatt hours of electricity sold** by the subject utility or company to any and all retail electric consumers whose electric load centers are served by that utility and are located within the utility’s certified territory or, in the case of an electric services company, are served by the company and are located within this state.

When discussing the requirements and specifically the determination of the applicable baseline for the alternative energy portfolio standard, ORC Section 4928.64(B) also indicates the following:

The baseline for a utility’s or company’s compliance with the alternative energy resource requirements of this section shall be the **average of such total kilowatt hours it sold** in the preceding three calendar years, except that the commission may reduce a utility’s or company’s baseline to adjust for new economic growth in the utility’s certified territory or, in the case of an electric services company, in the company’s service area in this state.

It is clear that energy (i.e., sales volume) is a fundamental component of the alternative energy portfolio standard. As kilowatt-hour electricity sales increase for an entity, so too does the baseline and thus the compliance obligation (i.e., the number of RECs needed to comply). Therefore, Staff concludes that it is completely reasonable and appropriate to recover the REC costs on a per kWh basis.

¹⁰ P. 8 of Nucor comments

¹¹ Ohio Revised Code 4928.64

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Summary: Comments electronically filed by Mr. Stuart M Siegfried on behalf of PUCO Staff