

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 Request)	Case No. 10-2891-EL-ACP
For Proposal to Purchase Renewable Energy)	
Credits through Ten-year Contracts)	

Reply 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.

In addition to the comments filed by Nucor Steel Marion, Inc., initial comments were also filed on March 18, 2011, by the Staff, the Environmental Law and Policy Center (ELPC), and Constellation NewEnergy, Inc. (CNE)

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

STAFF REPLY COMMENTS

Staff's initial comments addressed portions of Nucor's comments. Therefore, Staff's reply comments will address the initial submittals on behalf of ELPC and CNE. Staff's failure to address a topic raised in the other parties' comments should not be construed as agreement with the comment.

- (1) ELPC addressed primarily the comments submitted by Nucor, while CNE focused its comments on various provisions of the Purchase and Sale Agreement.¹ Based on its reading of the comments in this proceeding, Staff offers two general observations:
 - (A) Many of the comments expressed by CNE go to the topic of supplier flexibility. This topic is broached in several contexts, including the timing of REC supply², REC transfer schedules³, and permissible cure periods⁴. Given the relatively nascent solar REC market that currently exists in Ohio, Staff is not opposed to efforts to ensure a reasonable degree of flexibility provided the overall outcome does not deviate from the terms of the Second Supplemental Stipulation in Case No. 10-388-EL-SSO.
 - (B) Comments by both CNE and ELPC, as well as Nucor, address the topic of perceived risk. These arguments were raised primarily when addressing the Change in Law provision⁵ of FirstEnergy's proposed Purchase and Sale Agreement for Renewable Energy Credits. Staff understands the

¹ Purchase and Sale Agreement was attached as Appendix A of FE Filing in this proceeding.

² P. 3 of CNE comments

³ P. 5 of CNE comments

⁴ P. 5 of CNE comments

⁵ Article 9, Change in Law. P. 14.

efforts of the various parties to limit their client's or interest's perceived risk associated with a long-term agreement such as that proposed in this proceeding. However, Staff believes that most of the proposals on risk do not reduce overall risk, but rather redistribute risk. Staff is concerned that ratepayers' risk may not be adequately addressed in the various risk management proposals. Staff supports the concept of sharing risks reasonably among the various parties to such an arrangement in order to incent compliance with the statutory renewable benchmarks but to do so in a manner that appropriately balances any perceived risks.

- (2) Staff also offers one more specific observation, that being that Staff contests a premise in the ELPC initial comments. In the course of making its argument on illusory contracts, ELPC asserts that, "Ohio law requires that utilities enter into long-term contracts" with a citation to 4901:1-40-06(A)(1), Ohio Administrative Code.⁶

To the contrary, Staff does not believe that utilities must enter into long-term contracts for renewable energy credits (RECs). Rather, Staff believes that utilities must explore the universe of compliance options to identify that option, or combination of options, that offer compliance at a reasonable cost. Such analysis would presumably include consideration of long-term contracts, but not at the exclusion of all other compliance options.

The referenced section of the Ohio Administrative Code addresses the possibility for a *force majeure* determination. And in that context, Staff agrees that long-term contracts should be fully considered and evaluated prior to requesting any such determination.

⁶ P. 7 of ELPC comments

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