

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. 11-0411-EL-ACP
Majeure Determination for a Portion of the)
2010 Solar Energy Resources Benchmark)
Requirement Pursuant to Section)
4928.64(C)(4), Revised Code, and Section)
4901:1-40-06 of the Ohio Administrative)
Code.)

INITIAL COMMENTS OF THE PUCO STAFF

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “the Companies”) filed a request seeking a *force majeure* determination for the Companies’ 2010 solar compliance obligation. Specifically they request that their Ohio solar benchmark for 2010 be reduced to the 112 Ohio solar renewable energy credits (S-RECs) acquired through their diligent efforts.

Motions to intervene were subsequently filed by the Ohio Environmental Council (OEC), the Office of the Ohio Consumers’ Counsel (OCC), the Solar Alliance (SA), and the Environmental Law and Policy Center (ELPC).

The SA filed comments¹ in opposition to the Companies’ request.

The Attorney Examiner in this proceeding issued an Entry² that granted the motions to intervene of the four parties mentioned above and also established a procedural schedule comprised of the following:

- Initial comments due by April 4, 2011
- Reply comments due by April 11, 2011

¹ SA comments filed on 3/4/11

² Entry dated 3/16/11

Staff submits its initial comments consistent with the procedural schedule established in this proceeding.

STAFF COMMENTS

(1) Summary of the Companies' filing

In their filing, the Companies indicate that their 2010 solar compliance obligation, inclusive of their 2009 solar shortfall, consists of 6,376 S-RECs of which at least 3,206 must originate from Ohio facilities.

The Companies indicate that they secured 112 of the 3,206 Ohio SRECs needed to satisfy the in-state component of their 2010 solar compliance obligation, representing a shortfall of 3,094 in-state S-RECs.³

The Companies further indicate that they secured 3,170 S-RECs from facilities outside of Ohio, a volume sufficient to satisfy the "out-of-state benchmark".

The Companies assert that they "implemented an aggressive strategy" in their attempt to secure the necessary S-RECs, including sponsoring three requests for proposals (RFPs), participating in S-REC auctions, contacting S-REC brokers, and soliciting known suppliers of S-RECs.⁴

The Companies also indicate their involvement with several assessments of the Ohio market for Ohio S-RECs, all of which concluded that Ohio's S-REC market is constrained.⁵

(2) Summary of SA Comments

SA contests the Companies' request for a *force majeure* determination on a number of grounds, each of which is touched on below.

SA argues that the Companies' efforts have not been exhaustive, as the Companies apparently have not adequately considered building new solar generation as a means of securing necessary S-RECs. SA indicates that the statutory obligation requires utilities to consider self-generation, rather than only seeking S-RECs from solar facilities developed by other entities.⁶

³ 3,094 S-RECs comprised of 1,387 for Ohio Edison; 1,115 for Cleveland Electric Illuminating; 592 for Toledo Edison Company

⁴ P. 2 of Companies' filing

⁵ P. 7 of Companies' filing

⁶ P. 1 of SA comments

SA also argues that the Companies' residential REC program is flawed, in that the price paid to participants is not fixed. SA argues that this fluidity produces such uncertainty that residential renewable energy systems become "essentially un-financeable."⁷

SA further asserts that the Companies' RFP approach is unreasonable in that it seeks only short-term purchases, an approach that limits potential respondents to representatives of existing solar facilities. SA advocates long-term purchases, with a minimum 10 year term, as necessary to incent the development of new solar facilities.⁸

As a resolution, SA proposes three possible remedies: (a) the Commission should require the Companies to immediately conduct a long-term RFP for Ohio S-RECs, with the first 3,094 Ohio S-RECs to be applied to the 2009 and 2010 shortfalls, (b) the Commission should require the Companies to pay an alternative compliance payment totaling \$1,323,800, or (c) if neither (a) nor (b) is exercised, then the Commission should increase the Companies' 2011 Ohio solar benchmark by 3,094 S-RECs to reflect the cumulative shortfall from 2009 and 2010.

(3) Staff Comments

Staff believes that there is insufficient information in the Companies' initial filing to justify granting a *force majeure* determination, and that additional information is necessary before a decision can be reached as to the appropriateness of the Companies' request. Staff believes that the Commission clearly articulated its expectations in its Finding & Order addressing the Companies' 2009 *force majeure* request, when it indicated the following:

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

From this language, it is evident that the Commission expected the Companies to exhaust "all means available" for obtaining the necessary S-RECs to meet the statutory requirement. Based

⁷ P. 6 of SA comments

⁸ P. 5 of SA comments

⁹ p. 4 of Commission's Finding and Order in Case No. 09-1922-EL-ACP

on the information in the Companies' filing, it is not possible to determine if the Companies did in fact fully explore all available options.

While the Companies discussed their numerous efforts involving RFPs and contacts with REC brokers, it is not clear from their filing if they fully considered such options as (a) entering into long-term contracts for RECs and/or (b) constructing new in-state solar generating capacity. If the Companies evaluated such options but ultimately elected not to pursue them, the rationale for such decisions should be provided as part of this *force majeure* request. Further, if the solar resources in the state are constrained, as the Companies indicate was the conclusion from their various market assessments, then Staff believes that the Companies need to provide some discussion of the steps they have taken to address the perceived supply constraints. Absent such information, Staff finds it difficult to support a conclusion that the Companies pursued "all means available, if the RFP proves not to be a viable means to meet the statutory requirement."

Staff also believes that consideration of the Companies' *force majeure* request would benefit from discussion of how, if at all, the 2010 in-state solar shortfall could be incorporated into the REC RFP's that are the subject of the application currently pending before the Commission in Case No. 10-2891-EL-ACP. Staff believes that the Companies should include an assessment of this possibility as part of this *force majeure* request.

If the Commission were to assign the alternative compliance payment, Staff believes that the appropriate amount would be \$1,278,500. In 2009, the Companies indicated that they secured 13 Ohio S-RECs of 943 needed Ohio S-RECs, leaving a shortfall of 930 Ohio S-RECs to be carried over to 2010 per the *force majeure* determination.¹⁰ For 2010, the Companies indicated a need for Ohio S-RECs, including the 2009 shortfall, totaling 3,206.¹¹ Deducting the 2009 shortfall from the 3,206 figure produces a net of 2,276 Ohio S-RECs exclusive to 2010. Staff assumed that the 112 Ohio S-RECs obtained by the Companies for 2010 would first go to satisfying the 2009 shortfall, leaving 818 Ohio S-RECs remaining to be satisfied from 2009. Therefore, multiplying this 818 S-RECs by the solar alternative compliance payment (ACP) for 2009 (\$450/MWH¹²), and adding this to the product of 2,276 multiplied by the 2010 solar ACP (\$400/MWH), results in the total of \$1,278,500 proposed by Staff.

$$\$1,278,500 = (((943-13-112)*450) + ((3206 - 930) * 400))$$

¹⁰ Refer to Appendix A of Companies' filing in Case No. 10-0499-EL-ACP

¹¹ p. 1 of Companies' filing

¹² Per ORC, 4928.64(C)(2)(a)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/4/2011 3:50:50 PM

in

Case No(s). 11-0411-EL-ACP

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