

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application by Noble :  
Americas Energy Solutions, LLC, for a : Case No. 11-2384-EL-ACP  
Waiver from 2010 Ohio Sited Solar Energy :  
Resource Benchmarks. :

**INITIAL COMMENTS  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

On April 11, 2011, Noble Americas Energy Solutions LLC (Noble Solutions) filed an application in which it indicates an inability to secure Ohio solar renewable energy credits (S-RECs) and further seeks approval to toll the requirement for Ohio S-RECs from 2009 and 2010 to calendar year 2011.<sup>1</sup>

On May 26, 2011, the attorney examiner in this case established the following schedule for the submittal of comments and reply comments:

- Initial comments filed by June 27, 2011
- Reply comments filed by July 11, 2011

Staff files these comments in accord with the schedule established in this proceeding.

<sup>1</sup> *In re Noble Americas Energy Solutions*, Case No. 11-2384-EL-ACP (Application at 3) (April 11, 2011).

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### **A. Summary of Noble Solutions' Filing**

Noble Solutions asserts that it satisfied all of its 2010 compliance obligations with the exception of the in-state solar requirement. Despite contacting brokers and producers, Noble Solutions states that it was unable to locate in-state S-RECs at prices below the alternative compliance payment (ACP).<sup>2</sup> Therefore, Noble Solutions requests that its 2010 in-state solar requirement, which includes a 2009 shortfall that was rolled over to 2010 as a result of the Commission's decision in Case No. 10-0428-EL-ACP, be similarly rolled over and added to its 2011 in-state solar benchmark.

Noble Solutions further asserts that it has identified a vendor willing to supply Ohio S-RECs in 2011 at a quantity sufficient to address Noble Solution's in-state solar requirements for 2009 through 2011. Therefore, Noble Solutions indicates that it could resolve all of its in-state solar obligations as early as next year.<sup>3</sup>

### **B. Staff Analysis, Conclusions, and Recommendations**

Ohio Administrative Code (O.A.C.) Section 4901:1-40-06 allows entities to seek a *force majeure* determination from the Commission for all or a part of a renewable or solar energy benchmark. A party making such a request must show that it pursued all reasonable compliance options including, but not limited to, renewable energy credit (REC) solicitations, REC banking, and long-term contracts. Additionally, an assessment of the availability of qualified in-state resources, as well as qualified resources within the

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<sup>2</sup> *In re Noble Americas Energy Solutions*, Case No. 11-2384-EL-ACP (Application at 3) (April 11, 2011).

<sup>3</sup> *Id.* at 4.

territories of PJM and the MISO, must be included as part of any filing seeking a *force majeure* determination from the Commission.

Staff's analysis considers that O.A.C. Section 4901:1-40-06 assigns the requesting party the burden of proof to demonstrate that it pursued all reasonable compliance options prior to seeking a *force majeure* determination. While Noble Solutions indicates that it contacted several brokers, its filing does not indicate if it pursued any of the other options enumerated in the rule. Therefore, based on the information in Noble Solutions' filing, Staff cannot confirm that Noble Solutions satisfied the requirements in O.A.C. Section 4901:1-40-06(A)(1) to support a *force majeure* determination.

Although Noble Solutions indicates that it has identified a vendor capable of supplying the necessary Ohio S-RECs for Noble Solutions to satisfy its 2009-2011 in-state solar obligation, Noble Solutions does not provide any details on commitments or contracts it has with this entity. The existence of any such commitment/contract may be relevant to Staff's analysis and recommendations, and therefore Staff encourages Noble Solutions to clarify this point in its reply comments.

Also, implicit in Noble Solutions' procurement strategy is a position that the solar ACP represents a price ceiling when considering available S-RECs. Staff is not aware of any statutory or regulatory requirement that establishes the applicable ACP as a pricing threshold that cannot be exceeded. Staff acknowledges that the statute includes language<sup>4</sup> in which an electric distribution utility or electric services company could

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<sup>4</sup>

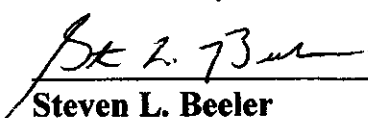
Ohio Rev. Code Ann. Section 4928.64(C)(3) (West 2011).

potentially be excused of full compliance if certain cost increases are experienced. However, Noble Solutions has not indicated that this portion of the statute was near being triggered.

Staff agrees that RECs and S-RECs should not be pursued at any cost, but Staff does not believe that the ACP automatically represents a price ceiling. The statutory language<sup>5</sup> on *force majeure* talks of RECs or S-RECs being “reasonably available.” Rather than using the ACP as a *de facto* measure of “reasonably available,” Staff proposes an approach in which any entities with a compliance obligation enter into an informal dialogue with Staff in the event that REC or S-REC prices appear to exceed the applicable ACP by a certain amount (i.e. 125% of the ACP). While the Staff could not offer any binding assurances during such dialogues, it would afford an opportunity for the issues to be discussed prior to a commitment in one direction or another.

Respectfully submitted,

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<sup>5</sup>

Ohio Rev. Code Ann. Section 4928.64(C)(4)(b)(West 2011).

## **PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing **Initial Comments** submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served by regular U.S. mail, postage prepaid, or hand-delivered; and/or sent via electronic mail to the following Parties of Record, this 27<sup>th</sup> day of June, 2011.



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**Steven L. Beeler**  
Assistant Attorney General

### **Parties of Record:**

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