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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Alternative Energy :
Portfolio Status Report of Dominion Retail, : Case No. 11-2470-EL-ACP
Inc. :

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

On April 15, 2011, Dominion Retail, Inc. (Dominion Retail) filed its 2010 annual alternative portfolio status report. Included within this status report was a request for relief from its 2010 Ohio solar benchmark.¹

On May 9, 2011, the attorney examiner in this case established a procedural schedule that was subsequently revised² to include the following schedule for the submittal of comments and reply comments relative to Dominion Retail's request for a *force majeure* determination:

- 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.

¹ *In re Dominion Retail, LLC*, Case No. 11-2470-EL-ACP (Status Report at 5) (April 15, 2011).

² *Id.* (Entry) (June 3, 2011).

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A. Summary of Dominion Retail's Filing

Dominion Retail asserted that its 2010 Ohio solar obligation equates to 10.588 megawatt-hours (MWHs).³ Dominion Retail indicated that it was unable to obtain the solar renewable energy credits (S-RECs) necessary to satisfy its obligation, and it calculated an alternative compliance payment due of \$4,400⁴ if a payment was assessed by the Commission.⁵ However, Dominion Retail argued that there were insufficient Ohio S-RECs available to permit full compliance, and therefore it requested that the Commission issue a *force majeure* determination.⁶

In support of its request, Dominion Retail indicated that its compliance strategy is comprised exclusively of purchasing RECs or S-RECs as that approach offers the flexibility necessary to respond to its fluctuating customer base. Dominion Retail further indicated that it was advised by the area's leading REC broker that there were no Ohio S-RECs available at any price.⁷ Based on this communication, Dominion Retail concluded that the alternative compliance payment should not be applied and rather that a *force majeure* determination should be granted. Dominion Retail is not opposed to adjusting its 2011 Ohio solar requirement to include its 2010 shortfall, although it noted that

³ *In re Dominion Retail, LLC*, Case No. 11-2470-EL-ACP (Status Report at 3) (April 15, 2011).

⁴ (11 MWH * \$400/MWH = \$4,400)

⁵ *In re Dominion Retail, LLC*, Case No. 11-2470-EL-ACP (Status Report at 5) (April 15, 2011).

⁶ *Id.* at 6.

⁷ *Id.* at 7.

grounds for *force majeure* relief may exist in 2011 as well.⁸ Dominion Retail further argues that a practice of modifying future obligations to account for past deficiencies may not be reasonable in the future as it will serve to increase prices for those Ohio S-RECs that do exist.⁹

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 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 Dominion Retail indicates that it contacted a single REC broker, its filing does not indicate if it pursued any other compliance option including those specifically enumerated in the rule. Staff further notes

⁸ *In re Dominion Retail, LLC*, Case No. 11-2470-EL-ACP (Status report at 9) (April 15, 2011).

⁹ *Id.*

that Dominion Retail's perceived need for flexibility does not preclude consideration of certain compliance options given the ability to bank and/or sell any excess RECs or S-RECs. Therefore, based on the information in Dominion Retail's filing, Staff cannot confirm that Dominion Retail satisfied the requirements in O.A.C. Section 4901:1-40-06(A)(1) to support a *force majeure* determination.

Respectfully submitted,


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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 27th day of June, 2011.



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