

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy)
Resources Report for Calendar Year 2010) Case No. 11-2650-EL-ACP
from SMART Paper Holdings LLC.)

FINDING AND ORDER

The Commission finds:

- (1) SMART Papers Holdings LLC (SMART Papers) is an electric services company as defined in Section 4928.01(A)(9), Revised Code.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric services companies to acquire a portion of their electricity supply for retail customers in Ohio from renewable energy resources. Specifically, the statute requires that, for 2010, 0.50 percent of the electricity sold by means of retail electric sales in Ohio must have been generated from renewable energy resources, including 0.010 percent from solar energy resources, half of which must be met with resources located within Ohio.
- (3) Additionally, Section 4928.64(C)(4), Revised Code, authorizes the Commission to determine whether an insufficient quantity of renewable energy resources was reasonably available in the market to facilitate an electric service company's compliance with the statutory benchmarks. The statute further provides that the Commission shall consider the electric service company's good faith effort to acquire sufficient renewable energy resources to comply with the benchmark and the availability of renewable energy resources in Ohio or other jurisdictions within PJM Interconnection, LLC (PJM) and the Midwest Independent Transmission System Operator (MISO).
- (4) On April 25, 2011, SMART Papers filed its 2010 alternative energy portfolio status report. In its report, SMART Papers requests that the Commission make a *force majeure* determination, pursuant to Section 4928.64(C)(4), Revised

Code, regarding SMART Papers' compliance with the renewable energy resources benchmark and solar energy resources benchmark for 2010. SMART Papers states that it was unable to obtain any renewable energy credits (RECs) or solar renewable energy credits (SRECs). Consequently, SMART Papers requests that the Commission make a *force majeure* determination or, in the alternative, determine and assess the amount of any alternative compliance payment (ACP).

In support of its request for a *force majeure* determination, SMART Papers states that it has been unable to generate or purchase the required RECs or SRECs due to the extremely small size of its load and benchmarks. SMART Papers represents that, despite its own efforts and those of an experienced energy agent, it found no market participant willing to deal in numbers as small as the 50 RECs and one SREC that SMART Papers asserts are needed to meet its compliance obligations for 2010. SMART Papers argues that it was unable to comply with its benchmarks through no fault of its own.

- (5) On May 5, 2011, the attorney examiner issued an entry establishing a deadline of June 1, 2011, for the filing of comments on SMART Papers' request for a *force majeure* determination and June 13, 2011, for the filing of reply comments. By entry issued May 26, 2011, the attorney examiner granted Staff's motion to extend the respective deadlines to June 15, 2011, and June 29, 2011.
- (6) On June 15, 2011, Staff filed comments regarding SMART Papers' request for a *force majeure* determination. Regarding SMART Papers' solar energy resources benchmark, Staff indicates that it reviewed the public bulletin board offered on PJM's Generation Attribute Tracking System, which enables sellers to post detailed information on available SRECs. Staff reports that nine SRECs from Commission-certified solar facilities located in Ohio were available for purchase, at least seven of which were vintage 2010. Staff argues that this data suggests that SRECs are available, even in smaller volumes. Further, Staff notes that SRECs can be banked for future use, pursuant to Rule 4901:1-40-04(D)(3),

Ohio Administrative Code (O.A.C.), and that SMART Papers has not indicated whether it evaluated or pursued larger SREC purchases that may have generated a greater response from sellers. Staff states that an electric services company requesting a *force majeure* determination is required to demonstrate, pursuant to Rule 4901:1-40-06(A)(1), O.A.C., that it pursued all reasonable compliance options, including, but not limited to, SREC solicitations, SREC banking, and long-term contracts. Staff concludes that SMART Papers has not adequately demonstrated the need for a *force majeure* determination with respect to its solar obligation.

With regard to SMART Papers' renewable energy resources benchmark, Staff notes that SMART Papers has an electric generating facility that was certified as an eligible Ohio renewable energy resource generating facility by the Commission in Case No. 10-254-EL-REN. Staff reports that this facility, as proposed, would co-fire cellulosic pellets with coal and was projected by SMART Papers to generate between 50,000 to 100,000 megawatt hours annually. Staff argues that SMART Papers has not explained why it was unable to generate the required RECs at this facility. Additionally, Staff again notes that Rule 4901:1-40-06(A)(1), O.A.C., requires SMART Papers to show that it pursued all reasonable compliance options. Staff finds that SMART Papers did not describe any of the specific actions undertaken by its energy agent and thus concludes that SMART Papers has not complied with the rule.

Finally, Staff determines and recommends that, in the event the Commission requires payment of the ACP, SMART Papers should remit a total payment of \$3,050.00, and offers instructions for properly remitting the ACP.

- (7) No reply comments were filed in this case.
- (8) Upon review of SMART Papers' request for a *force majeure* determination and Staff's comments, the Commission finds that SMART Papers' request should be granted, in part, and denied, in part. With respect to SMART Papers' solar energy resources benchmark, we find that there are sufficient grounds to grant SMART Papers' request for a *force majeure*

determination. The Commission notes that SMART Papers attempted to accomplish its goal of purchasing sufficient SRECs by working with an energy agent. Despite its efforts, however, SMART Papers was unable to obtain sufficient SRECs to satisfy its 2010 solar energy resources benchmark. As we have recognized in numerous proceedings today,¹ other electric utilities and electric services companies likewise experienced difficulties in meeting their in-state solar energy resources benchmarks for 2010. It is apparent that the market for in-state solar energy resources is still advancing to the point at which there will be sufficient resources available for all electric utilities and electric services companies to be able to meet the statutory standard, which was merely in its second year of implementation in 2010. However, although we have found today that an adequate market for in-state SRECs did not exist in 2010, the Commission expects all electric utilities and electric service companies to fully comply with the statutory requirement to engage in good faith efforts to acquire sufficient solar energy resources as set forth in Section 4928.64(c)(4)(b), Revised Code.

Pursuant to Section 4928.64(C)(4)(c), Revised Code, our approval of SMART Papers' request is contingent upon SMART Papers meeting its revised 2011 solar energy resources benchmark, which shall be increased to include the shortfall for the 2010 solar energy resources benchmark.

- (9) Regarding SMART Papers' renewable energy resources benchmark, we find that SMART Papers' request for a *force majeure* determination should be denied. As Staff notes, Rule 4901:1-40-06(A), O.A.C., requires an electric services company such as SMART Papers to demonstrate, in a

¹ In the Matter of the Application by Noble Americas Energy Solutions LLC for a Waiver from 2010 Ohio Sited Solar Energy Resource Benchmarks, Case No. 11-2384-EL-ACP, Finding and Order (August 3, 2011); In the Matter of Direct Energy Business LLC for a Waiver from Meeting the 2010 Ohio Sited Solar Energy Resource Benchmarks, Case No. 11-2447-EL-ACP, Finding and Order (August 3, 2011); In the Matter of the Alternative Energy Portfolio Status Report of Dominion Retail, Inc., Case No. 11-2470-EL-ACP, Finding and Order (August 3, 2011); In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for a Force Majeure Determination for Their In-State Solar Resources Benchmark Pursuant to Section 4928.64(C)(4)(a), Revised Code, Case No. 11-2479-EL-ACP, Finding and Order (August 3, 2011).

force majeure request, that it pursued all reasonable compliance options, including, but not limited to, REC solicitations, REC banking, and long-term contracts. The rule further requires that any request for a *force majeure* determination include an assessment of the availability of qualified in-state resources, as well as qualified resources within the territories of PJM and MISO.

Although SMART Papers endeavored to purchase sufficient RECs by working with an energy agent, SMART Papers has not demonstrated that it pursued any other reasonable compliance options, including those enumerated in the rule. In the absence of such a showing, we conclude that SMART Papers has not adequately explained how a *force majeure* determination is justified.

Additionally, in its assessment of the availability of qualified resources, SMART Papers states only that it found no market participant willing to deal in numbers as small as the amount of its renewable energy resources benchmark. However, SMART Papers does not specifically contend that there are not enough renewable energy resources to meet the demand for RECs. Neither did SMART Papers explain why it was unable to generate the required RECs at its certified renewable energy resource generating facility.

- (10) Finally, Rule 4901:1-40-05(C), O.A.C., requires Staff to review each electric services company's alternative energy portfolio status report, along with any timely filed comments, and to file its findings and recommendations and any proposed modifications to the report. In its findings and recommendations with respect to SMART Papers' alternative energy portfolio status report for 2010, Staff should offer its recommendations regarding SMART Papers' payment of the ACP with respect to the renewable energy resources benchmark, which the Commission will address at that time.

It is, therefore,

ORDERED, That SMART Papers' request for a *force majeure* determination be granted, in part, and denied, in part. It is, further,

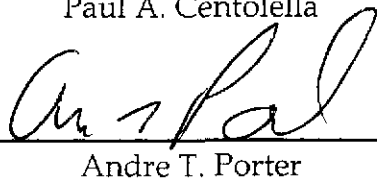
ORDERED, That SMART Papers' solar energy resources benchmark for 2011 be increased to include the shortfall for its 2010 solar energy resources benchmark, in accordance with finding (8). It is, further,

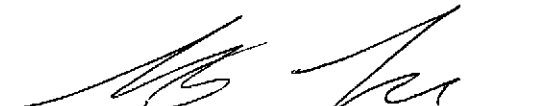
ORDERED, That a copy of this finding and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman

Paul A. Centolella


Andre T. Porter

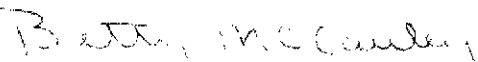

Steven D. Lesser

Cheryl L. Roberto

SJP/sc

Entered in the Journal

AUG 03 2011



Betty McCauley

Betty McCauley
Secretary