

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 ) Case No. 11-4625-EL-ACP  
Edison Company for Approval of Request )  
for Proposal to Purchase Renewable Energy )  
Credits Through Ten-Year Contracts. )

ENTRY

The Commission finds:

- (1) By Opinion and Order issued August 25, 2010, in Case No. 10-388-EL-SSO (*FirstEnergy ESP II Case*), the Commission adopted, as modified, a second supplemental stipulation, which introduced the potential for four requests for proposals (RFPs) through which Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, *FirstEnergy* or the Companies) would seek competitive bids to purchase renewable energy credits (RECs) and solar renewable energy credits (SRECs) through ten-year contracts. The purpose of the RFPs is to assist the Companies in achieving compliance with statutory alternative energy resource benchmarks. The first RFP application was submitted and approved, as modified, in Case No. 10-2891-EL-ACP (initial RFP).

The second supplemental stipulation, adopted by the Commission in the *FirstEnergy ESP II Case*, provides for specific terms regarding the remaining three RFPs. In pertinent part, those terms provide that, if the standard service offer load of the Companies is less than 15,000,000 MWh, no additional SRECs will be purchased that year; if the standard service offer load of the Companies is greater than 15,000,000 MWh, and less than 27,000,000 MWh, a minimum of an annual delivery of an additional 1,000 SRECs will be purchased that year; that the applications shall be filed no later than August 1 of 2011, 2012, and 2013; and that the standard service offer load of the Companies for the purpose of the thresholds be calculated by multiplying the Companies' prior year non-shopping

percentage, as submitted by the Companies to Staff in December of each year, by the Companies' long-term forecast as filed with the Commission on April 15 for the year in which an RFP may occur. *FirstEnergy ESP II Case*, Second Supplemental Stipulation (July 22, 2010) at 1-2.

- (2) On August 1, 2011, in the above-captioned case, the Companies filed an application (application) for approval to conduct a second RFP to purchase RECs and SRECs through ten-year contracts. In their application, the Companies requested authority to hold the second RFP for 1,000 SRECs, as the Companies' calculated the standard service offer load as greater than 15,000,000 MWh, and less than 27,000,000 MWh, in accordance with the provisions of the second supplemental stipulation in the *FirstEnergy ESP II Case*.
- (3) The Ohio Business Council for a Clean Economy (OBCCE) timely filed a motion to intervene. No party filed a memo contra OBCCE's motion to intervene. The Commission finds that the motion to intervene is reasonable and should be granted.
- (4) By entry issued October 5, 2011, the attorney examiner established a procedural schedule for the application, requiring comments to be filed by October 26, 2011; reply comments to be filed by November 7, 2011; and motions to intervene to be filed by November 21, 2011.
- (5) Comments were timely filed by Staff, The Solar Alliance (SA) and the Environmental Law and Policy Center (ELPC).
- (6) On October 25, 2011, Staff filed initial comments on the application. In its comments, Staff reiterated that the second supplemental stipulation in the *FirstEnergy ESP II Case* provided that the standard service offer load of the Companies be calculated by multiplying the Companies' prior year non-shopping percentage, as submitted by the Companies to Commission Staff in December of each year, by the Companies' long-term forecast as filed with the Commission on April 15<sup>th</sup> for the year in which an RFP may occur. Staff states that, critical to the implementation of this portion of the second supplemental stipulation, is the interpretation of the phrase "RFP may occur," as this will impact the volume of SRECs

sought, if any, through the second RFP. Staff states that it interprets the phrase "RFP may occur" as the date the RFP is issued.

- (7) On October 26, 2011, SA and ELPC filed joint comments. In their comments, SA and ELPC argue that the requirements in the RFP, regarding bidders that cannot demonstrate the ability to deliver commencing in reporting year one, failure to deliver in accordance with defined schedules, and recovery from the supplier where the supplier defaults, all bar new facilities from participating in the RFP. SA and ELPC argue that these requirements will limit the number of possible competitors, which could increase the cost of SRECs. SA and ELPC argue that the timeline of the second RFP should be modified to allow for new development. Further, SA and ELPC note that the collaborative participants were never provided with actual bidding rules to review and provide feedback during the collaborative process. SA and ELPC conclude that, if the second RFP is implemented as described, it will likely fail.
- (8) On November 7, 2011, OBCCE filed reply comments. In its reply comments, OBCCE argues that FirstEnergy should amend its application to reflect any under-subscription from the initial RFP as required in the second supplemental stipulation in the *FirstEnergy ESP II Case*, and should amend its application to allow for some variation in the amount of SRECs offered by bidders, rather than a fixed amount for each year, in order to encourage development of new renewable energy facilities.
- (9) Thereafter, on November 7, 2011, the Companies filed a Notice that the Proposed Request for Proposal will not be Conducted (Notice). In the Notice, the Companies state that, based on 2011 Ohio-sourced SRECs previously contracted for in the initial RFP, the Companies anticipate meeting their 2011 SREC statutory requirements, including the Companies' 2010 carryover, as well as their 2012 and 2013 SREC statutory requirements. Further, the Companies state that the terms of the second supplemental stipulation in the *FirstEnergy ESP II Case* did not contemplate that the Companies would conduct a second RFP under certain defined usage levels, and that those usage level requirements have been met. Specifically, the Companies state their belief that the phrase "RFP may occur"

in the second supplemental stipulation references the date the RFP is completed up to and including the notification of awards. Consequently, the Companies state that, given their interpretation, the RFP will actually occur in 2012, and, given that their 2012 projected standard service offer load will be less than 15,000,000 MWh, conclude that they will not be required to purchase an additional 1,000 SRECs under the terms of the second supplemental stipulation. Consequently, the Companies state their intention to notify the Commission and interested stakeholders that the Companies do not intend to conduct the RFP contemplated by the August 1, 2011, application.

Additionally, the Companies address SA and ELPC's comments by reiterating the success of the initial RFP and that the Companies anticipate meeting their 2011, 2012, and 2013 obligations through SRECs currently in the market, which rebuts SA and ELPC's argument that a second RFP will likely fail due to lack of development of new facilities. Further, the Companies point out that the terms and conditions of the second RFP criticized by SA and ELPC are the same terms and conditions approved by the Commission in the initial RFP process.

- (10) Initially, the Commission will address the Companies' argument that they are not required to conduct a second RFP, as the RFP will occur in 2012 under the Companies' interpretation of the second supplemental stipulation and, under the projected standard service offer load of 2012, the Companies' are not required to purchase any additional SRECs. The Commission disagrees with the Companies' interpretation of the term "RFP may occur" as the completion of the RFP up to and including notification of awards, which, in this case, would be 2012. As stated above, the terms of the second supplemental stipulation in the *FirstEnergy ESP II Case* require the application to be filed no later than August 1, 2011, and provide that the standard service offer load threshold should be calculated by multiplying the Companies' prior year non-shopping percentage, as submitted by the Companies to Staff in December of each year, by the Companies' long-term forecast as filed with the Commission on April 15 in the year in which the RFP may occur. Clearly, an application required to be filed by August 1, 2011, was intended to utilize data filed in

December 2010 and April 2011. Therefore, the Commission finds that the only reasonable interpretation of the second supplemental stipulation is that the second RFP is considered as occurring in 2011. Consequently, the Commission directs FirstEnergy to issue the second RFP as described in the August 25, 2010, order and second supplemental stipulation in the *FirstEnergy ESP II Case*.

- (11) Next, the Commission will address the comments filed in this case. The Commission finds that the Companies have successfully rebutted SA and ELPC's argument that the terms of the second RFP should be modified to allow for development of new facilities in order to prevent failure of the second RFP. As the Companies point out, the success of the initial RFP and the Companies' projection that they will meet their 2011, 2012, and 2013 SREC statutory requirements, indicate that the second RFP is not likely to fail due to lack of development of new facilities. Additionally, the Commission finds that the Companies' arguments adequately address OBCCE's arguments, and, additionally, the Commission notes that it granted FirstEnergy's application for rehearing in the initial RFP, specifically finding that allowance of unit-contingent SRECs, rather than firm delivery, was inconsistent with the second supplemental stipulation. Therefore, the Commission declines to adopt the recommendations of SA, ELPC, and OBCCE.

It is, therefore,

ORDERED, That OBCCE be granted intervention in accordance with Finding (3). It is, further,

ORDERED, That FirstEnergy issue the second RFP as described in the August 25, 2010, order and second supplemental stipulation in the *FirstEnergy ESP II Case*. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

  
Steven D. Lesser

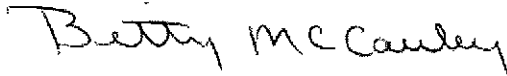
  
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**DEC 14 2011**



Betty McCauley  
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