

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Long-Term Forecast	)	
Report of Ohio Power Company and	)	Case No. 10-501-EL-FOR
Related Matters.	)	

In the Matter of the Long-Term Forecast	)	
Report of Columbus Southern Power	)	Case No. 10-502-EL-FOR
Company and Related Matters.	)	

---

**SUPPLEMENTAL REPLY OF INDUSTRIAL ENERGY USERS-OHIO**

---

Samuel C. Randazzo  
(Counsel of Record)  
Frank P. Darr  
Joseph E. Olikier  
Matthew R. Pritchard  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>TH</sup> Floor  
Columbus, OH 43215  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
sam@mwncmh.com  
fdarr@mwncmh.com  
joliker@mwncmh.com  
mpritchard@mwncmh.com

**OCTOBER 17, 2012**

**ATTORNEYS FOR INDUSTRIAL ENERGY USERS-OHIO**

## TABLE OF CONTENTS

	PAGE
I. INTRODUCTION .....	1
II. ARGUMENT .....	2
A. Need cannot be determined in an LTFR proceeding .....	3
B. Regardless of how need is defined it cannot be based on sREC requirements.....	4
C. The evidence does not support a finding of need under any theory .....	7
1. Turning Point is not required to satisfy AEP-Ohio's specific sRECrequirements .....	7
2. Evidence of a statewide need is irrelevant .....	10
III. CONCLUSION.....	15

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Long-Term Forecast	)	
Report of Ohio Power Company and	)	Case No. 10-501-EL-FOR
Related Matters.	)	

In the Matter of the Long-Term Forecast	)	
Report of Columbus Southern Power	)	Case No. 10-502-EL-FOR
Company and Related Matters.	)	

---

**SUPPLEMENTAL REPLY OF INDUSTRIAL ENERGY USERS-OHIO**

---

**I. INTRODUCTION**

On November 21, 2011, Ohio Power Company (“OP” or “AEP-Ohio”) and the Public Utilities Commission of Ohio’s (“Commission”) Staff (“Staff”) filed a partial Stipulation and Recommendation (“Stipulation”). Paragraph 2 of the Stipulation recommended that the Commission determine that the Turning Point Solar (“Turning Point”) facility is “needed” to comply with the in-state solar renewable energy credit (“sREC”) obligations contained in Section 4928.64, Revised Code. AEP-Ohio, Staff, and the University of Toledo Innovation Enterprises (“UT”) have sought to link a finding of need in this long term forecast report (“LTFR”) proceeding to a non-bypassable charge that may be potentially available under Section 4928.143(B)(2)(c), Revised Code, in an electric security plan (“ESP”).

Paragraph 2 of the Stipulation’s requested relief is contrary to Ohio law in several respects: (1) Section 4928.64(E), Revised Code, specifically prohibits recovery of the cost of compliance with sREC obligations through non-bypassable charges; (2) even if a finding of need for a renewable energy facility was not illegal on its face, such a finding

must be made in an ESP; and (3) a finding of need must be based on the specific needs of an electric distribution utility (“EDU”), rather than the statewide approach advocated by the proponents of the Stipulation.

Despite the clear prohibition in Ohio law against the Stipulation’s requested relief, the Commission issued an Entry reopening the record for additional briefing to address additional academically interesting issues.<sup>1</sup> The legal contortionism contained in the supplemental briefs of the proponents of the Stipulation is astounding, but no amount of squirming or repositioning can change the illegal nature of the relief requested in Paragraph 2 of the Stipulation. It is uncontested that the only purported “need” for Turning Point is the need for sRECs. No amount of incremental briefing can change or rewrite the prohibition in Ohio law against recovering the cost of compliance with sREC obligations through non-bypassable charges. Nor can it modify the requirement that a finding of need must be made in an ESP proceeding or that the finding must be EDU-specific. Thus, Paragraph 2 of the Stipulation must be rejected. Finally, even assuming that Turning Point could be the subject of a finding of need — either based on an EDU-specific or statewide approach — the proponents of the Stipulation have failed to demonstrate that there is currently or ever will be a shortage of sRECs.

## **II. ARGUMENT**

Before approving a settlement the Commission must, among other things, find that the settlement package does not violate any important regulatory principles or

---

<sup>1</sup> Such as (1) whether need should be defined solely as the need for energy and capacity, or does need include compliance with the renewable portfolio standard requirements (“RPS Requirements”); (2) the proper legal standard that should be applied to the Commission’s analysis of need; (3) what evidence is relevant to the Commission’s determination of need; (4) whether the Commission should solely consider AEP-Ohio’s need for the project, or whether the Commission should look beyond AEP-Ohio’s need to the need of the state or the need outside of the state.

practices.<sup>2</sup> A settlement, moreover, cannot provide the Commission with authority to do what the Commission does not otherwise have authority to do or to disrespect procedural or substantive requirements established by the General Assembly or the Commission's rules.<sup>3</sup>

The proponents of the Stipulation, in their prolonged assault on shopping customers during this protracted proceeding, have attempted to build a bridge from a finding of need in this proceeding to a non-bypassable charge in an ESP. But, as stated herein, such a finding is beyond the Commission's authority; thus, it must be rejected.

#### **A. Need cannot be determined in an LTFR proceeding**

The threshold problem inherent in Paragraph 2 of the Stipulation is that the Commission has no authority to determine that Turning Point is needed in an LTFR proceeding. The supplemental briefs of AEP-Ohio, Staff, and UT each failed to address this problem. Rather, the supplemental briefs of these parties assume that an LTFR proceeding is the appropriate venue to make such a determination. But, determining whether a specific generating facility is needed is not an issue for LTFR proceedings. Such proceedings are "limited to issues relating to forecasting"<sup>4</sup> and the Commission's role is to determine whether the LTFR is accurate, complete, and reasonable.<sup>5</sup> The ultimate purpose of an LTFR is to determine whether the applicant's forecast of load requirements and resources is accurate and reasonable — it is

---

<sup>2</sup> *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992). See, also, *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 82-83 (2002).

<sup>3</sup> *Monongahela Power Co. v. Pub. Util. Comm.*, 104 Ohio St.3d 571, 2004-Ohio-6896 at ¶26 (2004).

<sup>4</sup> Section 4935.04(E)(1), Revised Code.

<sup>5</sup> Section 4935.04(F), Revised Code.

specifically focused on the reasonableness of forecasting techniques and methodologies.<sup>6</sup>

A finding of need must be made in an ESP proceeding where, unlike in an LTFR proceeding, a hearing is mandatory. Section 4928.143(B)(2)(c), Revised Code (the Section referenced in the Stipulation), states, “no surcharge shall be authorized **unless the commission first determines in the [ESP] proceeding that there is need for the facility** based on resource planning projections submitted by the electric distribution utility.”<sup>7</sup> Accordingly, any need determination relevant for purposes of Section 4928.143(B)(2)(c), Revised Code, must be made in an ESP rather than an LTFR proceeding. As discussed further below, this ESP-related requirement is important because it undermines the contextualized basis upon which the proponents attempt to support their claims.

**B. Regardless of how need is defined it cannot be based on sREC requirements**

The proponents of the Stipulation have argued that the definition of need should be defined broadly to include the need for sRECs even though there is nothing in the statutory provisions concerning the LTFR process that might suggest that this claim has merit. The proponents of the Stipulation come to their conclusions from varying misguided angles, but each attack fails for the same fundamental reason.

AEP-Ohio argues (UT submits a similar argument) that the contents of its proposed resource plan support a finding of need for Turning Point, stating:

---

<sup>6</sup> *Id.*

<sup>7</sup> Section 4928.143(B)(2)(c), Revised Code (emphasis added); see Post Hearing Brief of Industrial Energy Users-Ohio (“IEU-Ohio”) at 12 (Apr. 25, 2012).

[T]he section's usage of the phrase "based on resource planning projections submitted by the electric distribution utility" provides guidance in answering these questions, and shows that a simplistic view considering only energy and capacity under-represents the Commission's oversight and a utility's duty with respect to resource planning.

Ohio law and the Commission's rules governing resource planning require utility to analyze factors beyond just energy and capacity when preparing a resource plan.<sup>8</sup>

AEP-Ohio thereby concludes that, because it has included renewable energy facilities in its proposed resource plan as a result of its compliance requirements under Section 4928.64, Revised Code, the Commission should determine that such resources are eligible for a finding of need under Section 4928.143(B)(2)(c), Revised Code.<sup>9</sup>

Staff argues that need should be defined broadly because it is not specifically defined by Section 4928.143(B)(2)(c). Staff further argues that the rules of statutory construction support its position, stating:

What does "need" mean in the context of R.C. 4928.143(B)(2)(c)? The Revised Code does not provide an answer, the term is undefined. In such circumstances the Revised Code does require that **"[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage."**<sup>10</sup>

Staff then claims that the dictionary defines "need" as an "obligation or requirement"<sup>11</sup> and under Section 4928.64(B), Revised Code:

An electric distribution utility (EDU) or electric services company must have increasing quantities of in-state solar RECs according to the

---

<sup>8</sup> Commission-Requested Supplemental Brief of Ohio Power Company at 4-5 (Oct. 3, 2012) (hereinafter "AEP-Ohio Supplemental Brief").

<sup>9</sup> *Id.*

<sup>10</sup> Brief in Response to September 5, 2012 Order Submitted on Behalf of the Public Utilities Commission of Ohio at 1-2 (Oct. 3, 2012) (hereinafter "Staff Supplemental Brief") (emphasis added).

<sup>11</sup> *Id.* at 2.

schedule in that code section. EDUs and electric services companies therefore have necessity or obligations created by that statute.<sup>12</sup>

Thus, Staff concludes that the Commission should determine that there is need to construct Turning Point to comply with the requirements of Section 4928.64(B), Revised Code.

Staff's argument ignores a key rule of statutory construction that defeats Staff's, AEP-Ohio's, and UT's claims: ***"Words and phrases shall be read in context."***<sup>13</sup> Although need is not specifically defined in Section 4928.143(B)(2)(c), Revised Code, the context provided by Section 4928.143(B), Revised Code, demonstrates that need *cannot* be defined as Staff, AEP-Ohio and UT claim.

More specifically, Section 4928.143(B), Revised Code, states ***"[n]otwithstanding any other provision of Title XLIX of the Revised Code to the contrary except division (D) of this section, divisions (I), (J), and (K) of section 4928.20, division (E) of section 4928.64 . . . the plan may provide for. . . a nonbypassable surcharge."***<sup>14</sup> Division (E) of Section 4928.64, Revised Code, provides that ***"[a]ll costs incurred by an electric distribution utility in complying with the requirements of this section shall be bypassable by any consumer that has exercised choice of supplier."***<sup>15</sup> In this context — regardless of what type of resources AEP-Ohio included in its LTFR resource plan and regardless of availability of

---

<sup>12</sup> Staff Supplemental Brief at 2-3 (Oct. 3, 2012) (footnotes omitted).

<sup>13</sup> Section 1.42, Revised Code (emphasis added). Staff concedes that Section 1.42, Revised Code, governs the interpretation of need in the context of Section 4928.143, Revised Code. Staff Supplemental Brief at footnote 1 (Oct. 3, 2012).

<sup>14</sup> Section 4928.143(B), Revised Code (emphasis added).

<sup>15</sup> Section 4928.64(E), Revised Code (emphasis added).



sRECs — it would defy reason and be unlawful and unreasonable to determine that a renewable energy facility is “needed” as that term is relevant under Section 4928.143(B)(2)(c), Revised Code.

**C. The evidence does not support a finding of need under any theory**

AEP-Ohio's, Staff's, and UT's remaining arguments regarding the evidence that may be relied upon to support a finding of need are based on the unlawful premise that need may be based on the need for sRECs; thus, the Commission cannot adopt them for purposes of addressing the Stipulation's recommendation that the Commission determine that Turning Point is “needed” to comply with the in-state sREC obligations contained in Section 4928.64, Revised Code. Regardless, the proponents of the Stipulation have failed to demonstrate that the evidence may support a finding of need for Turning Point on either an EDU-specific basis or through a statewide approach. Additionally, even the proponents of the Stipulation are in agreement that it would exceed the Commission's jurisdiction to base a finding of need on other states' obligations to comply with sREC requirements.

**1. Turning Point is not required to satisfy AEP-Ohio's specific sREC requirements**

While AEP-Ohio argues that need should be evaluated from a statewide perspective, AEP-Ohio claims that it specifically needs Turning Point to satisfy its own sREC requirements. AEP-Ohio claims that its purchase power contract with Wyandot Solar provides it with 15.1 gigawatt hours of solar energy, but, “in 2013, AEP Ohio's in-state RPS solar benchmark requirement is projected to be more than 18 GWh.”<sup>16</sup> AEP-Ohio's assertion is factually incorrect for several reasons. First, sREC obligations

---

<sup>16</sup> AEP-Ohio Supplemental Brief at 13 (Oct. 3, 2012).

are calculated based on an EDU's average annual kilowatt ("kWh") sales in the preceding three years; thus, an EDU's sREC obligations are highly sensitive to shopping. Second, as admitted by AEP-Ohio witness Castle during the hearing, AEP-Ohio's claimed sREC shortage is based on the incorrect shopping assumptions contained in the LTFR Supplement.<sup>17</sup> AEP-Ohio's LTFR Supplement assumed that only 9% of AEP-Ohio's load shopped in 2012, with only minor incremental shopping in future years.<sup>18</sup>

Based on the affidavit of AEP-Ohio shopping expert William Allen that was submitted into evidence during the hearing, AEP-Ohio's actual shopping rate (switched and pending) during the first three months of 2012 was 36.7%.<sup>19</sup> The affidavit indicated that if the Commission directed AEP-Ohio to charge competitive retail electric service ("CRES") providers the reliability pricing model ("RPM") price for capacity, shopping would quickly rise to 79%.<sup>20</sup> On July 2, 2012, the Commission determined that:

***[B]ecause the record in this proceeding demonstrates that RPM-based capacity pricing will promote retail electric competition, we find it necessary to take appropriate measures to facilitate this important objective. For that reason, the Commission directs AEP-Ohio to charge CRES providers the adjusted final zonal PJM RPM rate*** in effect for the rest of the RTO region for the current PJM delivery year (as of today, approximately \$20/MW-day), and with the rate changing annually on June 1, 2013, and June 1, 2014, to match the then current adjusted final zonal PJM RPM rate in the rest of the RTO region.<sup>21</sup>

---

<sup>17</sup> Tr. Vol. I at 47.

<sup>18</sup> *Id.*

<sup>19</sup> IEU-Ohio Ex. 2 at 7-9.

<sup>20</sup> *Id.*

<sup>21</sup> *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order at 23 (Jul. 2, 2012) (emphasis added).

For purposes of determining AEP-Ohio's future sREC obligations, the Commission must take the sworn statement contained in the affidavit as true. Utilizing the 79% shopping projection from the affidavit of Mr. Allen, Dr. Lesser determined that AEP-Ohio's in-state sREC requirement would peak at 16,282 MW hours<sup>22</sup> and then not exceed 15,000 MW hours per year before 2020. Because AEP-Ohio has a long-term purchase power agreement with Wyandot Solar that will produce 15,100 MW hours of energy per year,<sup>23</sup> the Wyandot Solar facility alone will satisfy AEP-Ohio's sREC requirements through at least 2020.

In recognition of the above shopping projections, AEP-Ohio attempted to deflect attention from its specific sREC requirements. To this end, AEP-Ohio has claimed that it is the provider of last resort and shopping customers may return down the road; therefore, Turning Point is needed now to safeguard against that possibility.<sup>24</sup> AEP-Ohio's argument is flawed. There is no evidence in the record to suggest that customers may one day return and the timing of any return may well occur after AEP-Ohio has commenced reliance on a competitive bid process ("CBP") to establish the price of default generation supply. As part of this CBP, AEP-Ohio will have the opportunity to require default generation supply bidders to satisfy the sREC requirements. And if customers do return in the future in ways that AEP-Ohio is, in other Commission proceedings, claiming will not happen, then AEP-Ohio, at that time — assuming the premise of AEP-Ohio's argument is legal and if there are no sRECs

---

<sup>22</sup> OP could easily bank its excess sRECs and use them to satisfy the compliance shortfall of 1,180 MW hours that will occur during the peak year.

<sup>23</sup> Tr. Vol. I at 28.

<sup>24</sup> AEP-Ohio Supplemental Brief at 13 (Oct. 3, 2012).

available in the market — may seek a finding of need in a future ESP proceeding. After all, sREC obligations are calculated based on the energy sales from the preceding three years;<sup>25</sup> thus, there would be sufficient lag time between customers returning and the obligation coming due to construct a new facility. Moreover, the Commission may adjust the compliance obligation pursuant to Section 4928.64(C), Revised Code.

## 2. Evidence of a statewide need is irrelevant

AEP-Ohio, UT, and Staff, through varying theories, argue that need should be evaluated from a statewide approach. While each argument is individually without merit, as addressed below, Section 4928.143(C), Revised Code, precludes an evaluation of need based on a statewide approach:

[I]f the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, **the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge.**<sup>26</sup>

Taking account of the need outside of AEP-Ohio's service territory would require customers of AEP-Ohio to pay a surcharge for a benefit to customers outside of AEP-Ohio's service territory; an outcome prohibited under Ohio law. AEP-Ohio, Staff, and UT each failed to address this legal barrier to their effort to entice the Commission to evaluate the Stipulation from a statewide perspective which is nowhere mentioned in the Stipulation.

AEP-Ohio argues that Section 4935.04(F)(6), Revised Code, supports its position because, the Commission “shall determine if . . . the report considers plans for expansion of the regional power grid and the planned facilities of other utilities in the

---

<sup>25</sup> Section 4928.64(B), Revised Code.

<sup>26</sup> Section 4928.143(C), Revised Code (emphasis added).

state.” Staff and UT make similar arguments.<sup>27</sup> First, AEP-Ohio, Staff, and UT fail to comprehend that the “facilities” identified in the LTFR statute are transmission lines. Amended Substitute Senate Bill 3 removed “electric generating facility” from the definition of “major utility facility” in the LTFR statute. The definition of “major utility facility” is now limited to a transmission line. Thus, use of the term “facilities” in the context of the LTFR statute refers to transmission lines above specified voltage levels and cannot be relied upon to demonstrate that the Commission can make a finding of need based on a statewide assessment regarding the need for sRECs or Turning Point.

Second, even if the facilities referenced in the statute are generation related, the consideration of planned facilities does not imply that the existence, or lack thereof, of such facilities supports the proposition that a finding of need can be made in an LTFR proceeding. Although the LTFR must *consider* the planned facilities of other utilities, as stated above, the Commission’s role in an LTFR proceeding is to determine whether the LTFR is accurate, complete, and reasonable. And the Stipulation asks the Commission to make a determination of need in the LTFR proceeding for the purposes of satisfying the need requirement that must be met in an ESP proceeding before a non-bypassable charge can be lawfully authorized by the Commission.

AEP-Ohio and UT claim that “the statewide approach also satisfies the policy objectives for the Commission outlined in R.C. 4928.02.” AEP-Ohio and UT rely on subsections (J) and (N), which state that it is the state policy to “[p]rovide coherent, transparent means of giving **appropriate** incentives to technologies that can adapt successfully to potential environmental mandates” (emphasis added) and “[f]acilitate the

---

<sup>27</sup> Staff Supplemental Brief at 8 (Oct. 3, 2012); UT Supplemental Brief at 8 (Oct. 3, 2012).

state's effectiveness in the global economy" respectively.<sup>28</sup> First, any incentives must be appropriate, and it would not be appropriate to provide a non-bypassable charge for Turning Point which would send market-distorting price signals to potential developers of solar facilities in Ohio.<sup>29</sup> Second, the Stipulation's proposed role for Turning Point would cause an across-the-board rate increase that would make manufacturers less effective in the global economy. Third, not only does Turning Point not promote the state policy identified by the proponents of the Stipulation, it would violate the state policy against anticompetitive subsidies and "customer choice".<sup>30</sup>

Staff and UT, in an argument that AEP-Ohio does not join, claim that the Commission should evaluate need on a statewide approach because Section 4935.01, Revised Code, obligates the Commission to "[e]stimate statewide and regional needs for energy for the forthcoming five- and ten-year periods . . .".<sup>31</sup> First, UT and Staff are incorrect because Section 4935.01, Revised code, lays out the Commission's obligations with respect to energy forecasting, and those obligations are disconnected from the issues to be determined in an LTFR proceeding. Indeed, the information to be contained in an LTFR and the scope of an LTFR proceeding is governed by Section 4935.04, Revised Code. Under that Section, the Commission's role is limited to determining whether the LTFR is complete, accurate, and reasonable. And, as Staff

---

<sup>28</sup> AEP-Ohio Supplemental Brief at 9 (Oct. 3, 2012); UT Supplemental Brief at 2 and 8 (Oct. 3, 2012).

<sup>29</sup> FirstEnergy Solutions Corp. ("FES") Exhibit 1 at 4.

<sup>30</sup> Section 4928.02(H), Revised Code.

<sup>31</sup> Staff Supplemental Brief at 7 (Oct. 3, 2012); UT Supplemental Brief at 4 (Oct. 3, 2012).

concedes, LTFRs are specific to each EDU because “under the forecasting statutes individual companies are responsible only for their own service areas.”<sup>32</sup>

Sections 4928.143 and 4928.64, Revised Code, further demonstrate that need must be based on an EDU-specific approach. sREC obligations are computed specific to the annual energy sales of each EDU or electric service company. Section 4928.143, Revised Code, which is the only statute that can authorize a non-bypassable charge for the life of a generating facility, can only be applied by its own words, on an EDU-specific basis. Finally, as stated above, the benefits derived from a non-bypassable surcharge must be reserved and made available to the customers that pay the surcharge. Making such benefits available to customers outside of AEP-Ohio’s service territory would violate this cost/benefit relationship required by Ohio law in circumstances where a non-bypassable charge is lawful and reasonable.

Even assuming, *arguendo*, a determination of need may be made based on a statewide approach, the proponents of the Stipulation have not met their burden. While AEP-Ohio claims that “Turning Point is the only known planned facility with sufficient capacity to satisfy the imminent [statewide] need for additional in-state solar generating resources,”<sup>33</sup> there is no evidence to support AEP-Ohio’s claim. Indeed, the evidence requires a different conclusion.

According to Mr. Bellamy’s testimony, construction of 15 MWs of solar generation in Ohio per year will satisfy the in-state sREC requirements of the entire state through

---

<sup>32</sup> Staff Supplemental Brief at 7 (Oct. 3, 2012).

<sup>33</sup> AEP-Ohio Supplemental Brief at 4 (Oct. 3, 2012).

2025.<sup>34</sup> Mr. Bellamy conceded that if solar resource development continues at the same pace as in 2010 and 2011, the entire state will have more sRECs than is needed by a large margin.<sup>35</sup> Moreover, in the first nine months of 2012, the Commission has issued certification determinations for over 17.94 MWs of Ohio-based solar projects.<sup>36</sup> AEP-Ohio's claim about what will happen without Turning Point stands in direct conflict with what is happening without Turning Point and the non-bypassable charges that are the ultimate objective of AEP-Ohio, Staff and UT.

Finally, Staff's and UT's supplemental briefs wrongly claim that the excess sRECs that could be potentially produced by Turning Point may be needed to comply with the portion (one-half) of the sREC obligation that may be satisfied by out-of-state solar facilities.<sup>37</sup> As witness Bellamy identified, at the time of the hearing, Pennsylvania alone had constructed 115 MWs of solar facilities.<sup>38</sup> Based on those facilities, Ohio will

---

<sup>34</sup> According to Mr. Bellamy's testimony, there must be approximately 250 MW of solar constructed in Ohio by 2025. Since there was 40 MW of solar completed at the end of 2011, then there must be 210 MW developed over the next 14 years. Staff Ex. 1 at 5 (Figure 1); AEP-Ohio Ex. 1 at 11. Thus, the average development target is 15 MW per year. These projections ignore the Commission's ability to modify the RPS Requirements upon a showing that compliance requirements cannot be reasonably satisfied.

<sup>35</sup> Staff Ex. 1 at 7-8.

<sup>36</sup> See Attachment A, submitted in the Supplemental Brief of IEU-Ohio, containing a list of Ohio-based solar energy facilities certified by the Commission in 2012 (last updated on Sept. 21, 2012), sorted from the Commission's list of certified renewable energy facilities. Located at <http://www.puco.ohio.gov/puco/index.cfm/industry-information/industry-topics/ohioe28099s-renewable-and-advanced-energy-portfolio-standard/> (last viewed on Oct. 3, 2012). The Commission should admit Attachment A into evidence or, at a minimum, take administrative notice of the 17.94 MW of certified solar facilities listed on Attachment A. The facilities, MW values, docket numbers, and actual certificates can be viewed on the Commission's website. Moreover, during the hearing, the Attorney Examiner took administrative notice of several pending applications for certification as a renewable energy facility. Tr. at 62-64. The existence of the certificates listed on Attachment A cannot be disputed.

<sup>37</sup> UT Supplemental Brief at 9 (Oct. 3, 2012).

<sup>38</sup> Staff Ex. 1 at 8.



not require additional out-of-state sRECs prior to 2018.<sup>39</sup> Moreover, at the time of the hearing, there were over 500 MWs of solar facilities listed in the Pennsylvania portion of the PJM Interconnection LLC Generation Queue.<sup>40</sup> Given that the amount of planned solar facilities in Pennsylvania alone exceeds the existing amount — which could provide compliance through 2017 — by nearly five times, Staff’s and UT’s claim that the excess sRECs from Turning Point might be needed at some later date is unfounded and cannot be relied upon to support a finding of need in this proceeding.

### **III. CONCLUSION**

For the reasons set forth herein and previously, and, regardless of the content of any additional briefs, IEU-Ohio urges the Commission to reject the Stipulation’s request that the Commission find that there is a need for Turning Point for any purpose relevant to the application of Section 4928.143(B)(2)(c), Revised Code, or the establishment of any non-bypassable generation-related charge.

Respectfully submitted:

/s/ Joseph E. Olikier  
Samuel C. Randazzo  
(Counsel of Record)  
Frank P. Darr  
Joseph E. Olikier  
Matthew R. Pritchard  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>TH</sup> Floor  
Columbus, OH 43215

**ATTORNEYS FOR INDUSTRIAL ENERGY USERS-OHIO**

---

<sup>39</sup> *Id.*

<sup>40</sup> FES Ex. 1 at JAL-8.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Supplemental Reply of Industrial Energy Users-Ohio*, was served upon the following parties of record this 17th day of October 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

/s/ Joseph E. Olikier  
Joseph E. Olikier

Steven T. Nourse  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215  
mjsatterwhite@aep.com  
stnourse@aep.com

**ON BEHALF OF COLUMBUS SOUTHERN POWER  
COMPANY AND OHIO POWER COMPANY**

Mark A. Hayden  
Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
haydenm@firstenergycorp.com

James F. Lang  
Laura C. McBride  
N. Trevor Alexander  
CALFEE, HALTER & GRISWOLD LLP  
1400 KeyBank Center  
800 Superior Ave.  
Cleveland, OH 44114  
jlang@calfee.com  
lmcbride@calfee.com

**ON BEHALF OF FIRSTENERGY SERVICE COMPANY**

Jack D'Aurora  
The Behal Law Group LLC  
501 South High Street  
Columbus, OH 43215  
jdaurora@behallaw.com

**ON BEHALF OF UNIVERSITY OF TOLEDO  
INNOVATION ENTERPRISES CORPORATION**

M. Howard Petricoff  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street  
Columbus, OH 43215  
mhpeticof@vorys.com

**ON BEHALF OF INTERSTATE GAS SUPPLY, INC.  
D/B/A IGS ENERGY AND THE RETAIL ENERGY  
SUPPLY ASSOCIATION**

Thomas W. McNamee  
Assistant Attorney General  
William Wright, Chief  
Public Utilities Section  
180 E. Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215-3793  
thomas.mcnamee@puc.state.oh.us

**ON BEHALF OF THE STAFF OF THE PUBLIC  
UTILITIES COMMISSION OF OHIO**

Greta See  
Sarah Parrott  
Attorney Examiners  
Public Utilities Commission of Ohio  
180 E. Broad Street, 12<sup>th</sup> Floor  
Columbus, OH 43215-3793  
Greta.See@puc.state.oh.us  
Sarah.Parrot@puc.state.oh.us

**ATTORNEY EXAMINER**

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/17/2012 4:54:25 PM**

**in**

**Case No(s). 10-0501-EL-FOR, 10-0502-EL-FOR**

Summary: Reply (Supplemental Reply) of Industrial Energy Users-Ohio electronically filed by Mr. Joseph E. Olikar on behalf of Industrial Energy Users-Ohio