

**Case No. 11-2363-EL-ACP**

## Findings and Recommendations of the PUCO Staff

Senate Bill 221, with an effective date of July 31, 2008, established Ohio's alternative energy portfolio standard (AEPS) applicable to electric distribution utilities and electric service companies. The AEPS is addressed principally in sections 4928.64 and 4928.65, Ohio Revised Code (ORC), with relevant resource definitions contained within 4928.01(A), ORC.

- Renewable Energy Resources = 0.50% (includes solar requirement)
- Solar Energy Resources = 0.010%

The PUCO further developed rules to implement the Ohio AEPS, with those rules contained within Ohio Administrative Code (OAC) 4901:1-40.

Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, an annual alternative energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks and planning requirements have or will be met.

Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.

4901:1-40-05(C), OAC:

Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.

The findings and recommendations in this document pertain to the company's compliance status. This document does not address such matters as cost recovery or status relative to the statutory 3% cost provision.

## **II. Company Filing Summarized**

NextEra Energy Services Ohio, LLC (NextEra or Company) filed its AEPS compliance status report for the 2010 compliance year on April 15, 2011. In its compliance report, it proposed a baseline of [REDACTED] megawatt-hours (MWHs) which it asserted was representative of its 2010 Ohio retail electric sales volumes. The Company explained in its filing that although it had Ohio sales in 2009, it did not rely on those sales to comprise its baseline for 2010 as "the 2009 number included NOPEC volumes and that book of business was sold in 2009".<sup>1</sup>

With its proposed baseline of [REDACTED] MWHs and the 2010 statutory benchmarks, NextEra computed its 2010 compliance obligations the details of which are provided in the unredacted version of its filing.

## **III. Filed Comments**

No persons filed comments in this proceeding.

## **IV. Staff Findings**

Following its review of the annual status report and any timely comments submitted in this proceeding, Staff makes the following findings:

- (1) That NextEra is an electric services company with retail electric sales in the state of Ohio, and therefore NextEra had an AEPS compliance obligation for 2010.

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<sup>1</sup> Annual compliance status report, p.4

- (2) That NextEra filed its annual status report for 2010 AEPS compliance activities on April 15, 2011.
- (3) That in 2009, the Company was doing business under the name of Gexa Energy.
- (4) That the Company accurately computed its compliance obligation, given its proposed baseline. However, Staff does not believe the baseline proposed by NextEra is appropriate.
- (5) That for the 2010 compliance year, the baseline should be computed as the average of annual Ohio retail electric sales for the years 2007, 2008, and 2009. The Company did not have such sales in 2007 or 2008, but did have actual Ohio retail electric sales in 2009 of 1,581,343 MWHs. Therefore, Staff finds that the Company's baseline for the 2010 compliance year should be 1,581,343 MWHs pursuant to 4901:1-40-03(B)(2)(a), OAC.
- (6) That for the 2009 compliance year, the Company retired 221 more renewable energy credits (RECs) than was necessary for its 2009 compliance obligation, including 110 from Ohio facilities. The Commission determined in Case No. 10-0496-EL-ACP that these excess RECs may be applied against a future compliance obligation.
- (7) That for the 2009 compliance year, the Company was granted a *force majeure* determination for its solar obligation. As a result, its 2009 solar deficiency of 61 solar RECs (S-RECs), including at least 31 from Ohio facilities, was to be made up in 2010.
- (8) That the Company has retired RECs via its PJM EIS Generation Attributes Tracking System (GATS) reserve subaccount.
- (9) That with the baseline proposed by Staff, the Commission decisions relative to the Company's 2009 compliance year filing, and the RECs and S-RECs already retired by the Company for the 2010 compliance year, the Staff concludes that the Company is short of compliance by the following:
  - [REDACTED] Ohio S-RECs
  - [REDACTED] Other S-RECs
  - [REDACTED] Ohio RECs
  - [REDACTED] Other RECs

## **V. Staff Recommendations**

Following its review of the information submitted in this proceeding and other relevant data, Staff recommends the following:

- (1) That NextEra be found to have under-complied with its 2010 AEPS compliance obligations, including the solar shortfall from 2009.
- (2) That the Commission requires NextEra to pay an alternative compliance payment in the amount of \$326,955 as detailed on Exhibit 1. Such payment should be delivered to the Commission within 30 days of the imposition of any compliance payment requirement.

The payment should be directed to the PUCO's Fiscal Department, and made out to "Treasurer State of Ohio". A letter should also be attached to the check stating that it is a compliance payment required by Ohio Revised Code Section 4928.64 for deposit to the credit of the Advanced Energy Fund, under the control of the Ohio Department of Development and created under section 4928.61 of the Revised Code. The letter should also cite the Commission case ordering the payment.

In addition, NextEra should submit an attestation consistent with the requirements in 4901:1-40-08(D), OAC.

- (3) That, as an alternative to assigning a compliance payment, the Commission could require that the compliance shortfalls as detailed on Exhibit 1, be rolled forward to the 2013 compliance year. As the Company had sold its 2009 NOPEC volumes, it is possible that the baseline calculation and compliance requirements were subject to some degree of uncertainty.
- (4) That for future compliance years in which the Company is utilizing GATS to demonstrate its Ohio compliance efforts, the Company initiates the transfer of the appropriate RECs and S-RECs to its GATS reserve subaccount between March 1<sup>st</sup> and April 15<sup>th</sup> so as to precede the filing of its Ohio annual compliance status report with the Commission.

NextEra Compliance Plan Status Report for Compliance Year 2010 Summary Sheet					
	(A) MWH Sales Unadjusted	(B) Proposed Adjustments	(C) = (A) - (B) MWH Sales Adjusted		
2007	0	0	0	(A)	
2008	0	0	0	(B)	
2009	1,581,343	0	1,581,343	(C)	
Baseline for 2010 Compliance Obligation			1,581,343.00	(D)	
0.50%	<b>2010 Statutory Compliance Obligation</b>				
	2010 Non-Solar Renewable Benchmark		0.49%	(E)	
	2010 Solar Renewable Benchmark		0.01%	(F)	
	Per ORC, 4928.64(B)(2)				
	<b>2010 Compliance Obligation</b>				
	Non-Solar RECs Needed for Compliance			(G)	
	Minimum Required from Ohio Facilities			(H)	
	Solar RECs Needed for Compliance			(I)	
	Minimum Required from Ohio Facilities			(J)	
<i>Refer to Case No. 10-0496-EL-ACP</i>	<b>Carry-Over from Previous Year(s), if applicable</b>				
	Ohio Non-Solar - MWHs		-110	(K)	
	Other Non-Solar - MWHs		-111	(L)	
	Ohio Solar - MWHs		31	(M)	
	Other Solar - MWHs		30	(N)	
	<b>Total 2010 Compliance Obligations</b>				
	Non-Solar RECs Needed for Compliance			(O) = (G) + (K) + (L)	
	Minimum Required from Ohio Facilities			(P) = (H) + (K)	
	Solar RECs Needed for Compliance			(Q) = (I) + (M) + (N)	
	Minimum Required from Ohio Facilities			(R) = (J) + (M)	
	<b>2010 Performance (Per GATS Data)</b>				
	Ohio Non-Solar - MWHs			(S)	
	Other Non-Solar - MWHs			(T)	
	Ohio Solar - MWHs			(U)	
	Other Solar - MWHs			(V)	
	<b>Under Compliance in 2010 (if applicable)</b>				
	Ohio Non-Solar - MWHs			(W) = (P) - (S)	
	Other Non-Solar - MWHs			(X) = (O - P) - (T)	
	Ohio Solar - MWHs			(Y) = (R) - (U)	
	Other Solar - MWHs			(Z) = (Q - R) - (V)	
	<b>2010 Alternative Compliance Payments</b>				
	Non-Solar, per MWH		\$45.00	(AA)	
	Solar, per MWH - per 4928.64(C)(2)(a)		\$400.00	(BB)	
	<b>2010 Payments (if applicable)</b>				
	Non-Solar Total			(CC) = (W + X) * (AA)	
	Solar Total			(DD) = (Y + Z) * (BB)	
	TOTAL		\$326,955.00	(EE) = (CC) + (DD)	

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

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Summary: Staff Review and Recommendation (Public Version) electronically filed by Mr. Stuart M Siegfried on behalf of PUCO Staff