

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Energy )  
Resources Report for Calendar Year 2010 ) Case No. 11-2363-EL-ACP  
from NextEra Energy Services Ohio, LLC. )

In the Matter of the Annual Energy )  
Resources Report for Calendar Year 2011 ) Case No. 12-1285-EL-ACP  
from NextEra Energy Services Ohio, LLC. )

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Vorys, Sater, Seymour and Pease LLP, by Stephen M. Howard, 52 East Gay Street, PO Box 1008, Columbus, OH 43215, on behalf of NextEra Energy Services Ohio, LLC.

Mike DeWine, Ohio Attorney General, by Thomas G. Lindgren, Assistant Attorney General, 180 East Broad Street, 6<sup>th</sup> floor, Columbus, Ohio 43215, on behalf of Staff of the Commission.

OPINION:

I. Background

Senate Bill 221, effective on 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, Revised Code. Pursuant to Section 4928.64(B)(2), Revised Code, the specific compliance obligations for 2010 and 2011 are as follows:

- (1) Renewable Energy Resources are equal to 0.50 percent (includes solar requirement) for 2010, increasing to 1.00 percent for 2011.
- (2) Solar Energy Resources are equal to 0.010 percent for 2010, increasing to 0.030 percent for 2011.

Additionally, pursuant to statute, at least half of the renewable energy resources must be met through facilities located in the state of Ohio.

NextEra Energy Services Ohio, LLC (NextEra) is an electric services company as defined in Section 4928.01(A)(9), Revised Code, and, as such, is subject to the jurisdiction of this Commission.

On April 15, 2011, in Case No. 11-2363-EL-ACP (11-2363), NextEra filed its 2010 alternative energy portfolio status report (report) in *In the Matter of the Alternative Energy Resources Report for Calendar Year 2010 from NextEra Energy Services Ohio, LLC, In the Matter of the Annual Energy Resources Report for Calendar Year 2011 from NextEra Energy Services, LLC*, pursuant to Sections 4928.64 and 4928.65, Revised Code, and Rules 4901:1-40-03 and 4901:1-40-05, O.A.C. On July 15, 2013, the Commission Staff (Staff) filed its Findings and Recommendations on NextEra's 2010 report (2010 Staff Report). Staff notes that while NextEra accurately computed its compliance obligation given its proposed baseline, the baseline proposed by NextEra is not appropriate. Specifically, Staff submits that the baseline for the 2010 compliance year should be computed as the average of annual Ohio retail electric sales for the years 2007, 2008, and 2009. Noting that the company did not have retail sales for 2007 and 2008, but did for 2009 (1,581,343 megawatt hours [MWHs]), Staff asserts that the company's baseline for the 2011 compliance year should be 1,581,343 MWHs pursuant to Rule 4901:1-40-03(B)(2)(a), Ohio Administrative Code (O.A.C.).

Additionally, Staff notes that, while NextEra has retired non-solar renewable energy credits (RECs) and solar renewable energy credits (S-RECs) via its PJM EIS Generation Attributes Tracking System (GATS) reserve subaccount, such retirement was based on the compliance obligation calculated by the company using its proposed baseline. Staff asserts that NextEra has incorrectly calculated its applicable 2010 baseline. Therefore, Staff recalculated the amount of NextEra's shortfall relative to Ohio RECs, Other-RECs, Ohio S-RECs, and Other S-RECs.

Based on its recalculation, Staff asserts that NextEra has under-complied with its 2010 AEPS compliance obligations. Therefore, Staff recommends that the Commission require NextEra to pay an alternative compliance payment in the amount of \$326,955 within 30 days of the Commission Order. In the alternative to such payment, Staff recommends that the identified compliance shortfalls be rolled forward to the 2013 compliance year.

On April 19, 2012, as amended on January 9, 2013, and January 14, 2013, NextEra filed its 2011 report in Case No. 12-1285-EL-ACP (12-1285), *In the Matter of the Annual Energy Resources Report for Calendar Year 2011 from NextEra Energy Services, LLC*, pursuant

to Sections 4928.64 and 4928.65, Revised Code, and Rules 4901:1-40-03 and 4901:1-40-05, O.A.C.

On July 18, 2013, Staff filed Findings and Recommendations on NextEra's 2011 report (2011 Staff Report). According to Staff, while NextEra accurately computed its compliance obligation given its proposed baseline, the baseline proposed by NextEra is not appropriate. Specifically, Staff submits that the baseline for the 2011 compliance year should be computed as the average of annual Ohio retail electric sales for the years 2008, 2009, and 2010. Noting that the company did not have retail sales for 2008, Staff asserts that averaging the actual Ohio retail sales for 2009 (1,581,343 MWHs) and 2010 (418,471 MWHs), the company's baseline for the 2011 compliance year should be 999,907 MWHs pursuant to Rule 4901:1-40-03(B)(2)(a), O.A.C.

Additionally, Staff notes that while NextEra has retired RECs and S-RECs via its GATS reserve subaccount, such retirement was based on the compliance obligation calculated by the company using its proposed baseline. Staff asserts that NextEra has incorrectly calculated its applicable baseline. Therefore, Staff recalculated the amount of NextEra's shortfall relative to Ohio RECs, Other-RECs, Ohio S-RECs, and Other S-RECs.

Based on its recalculation, Staff asserts that NextEra has under-complied with its 2011 AEPS compliance obligations. Therefore, Staff recommends that the Commission require NextEra to pay an alternative compliance payment in the amount of \$363,642 within 30 days of the Commission Order. In the alternative to such payment, Staff recommends that the identified compliance shortfalls be rolled forward to the 2013 compliance year.

Pursuant to the Entry of August 9, 2013, these matters were scheduled for a consolidated hearing on August 28, 2013. The hearing took place as scheduled on August 28, 2013. No persons have sought intervention or filed comments in these proceedings.

## II. Summary of the Stipulation

Staff and NextEra filed a stipulation and recommendation on August 23, 2013. The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the stipulation:

- (1) For the 2009 compliance year, the company retired 221 more RECs than was necessary for its 2009 compliance obligations, including 110 from Ohio facilities. Pursuant to the Commission's decision in Case No. 10-496-EL-ACP, *In the*

*Matter of the Alternative Energy Resources Report for Calendar Year 2009 from Gexa Energy Ohio, LLC*, these excess RECs may be applied against a future compliance obligation.

- (2) For the 2009 compliance year, NextEra was granted a force majeure determination for its solar obligation. Therefore, its 2009 solar deficiency of 61 solar RECs, including at least 31 from Ohio facilities, was able to be made up in 2010.
- (3) NextEra's baseline for the 2010 compliance year should be 1,581,343 MWHs.
- (4) NextEra has retired RECs via its GATS reserve subaccount towards its 2010 AEPS compliance obligations.
- (5) Given the stipulated 2010 compliance year baseline of 1,581,343 MWHs, the Commission's decision relative to NextEra's 2009 compliance year filing, and the RECs and S-RECs already retired by the company for the 2010 compliance year, the company is short of compliance relative to Ohio S-RECs, Other S-RECs and Other RECs.
- (6) NextEra has under complied with its 2010 AEPS compliance obligation, including the solar shortfall from 2009. NextEra and Staff agree with the shortfalls detailed in Ex. 1 to the Staff's recommendations in 11-2363.
- (7) As an alternative to assigning a compliance payment for the 2010 compliance year, the Commission should require that the shortfalls detailed on Exhibit 1 to the 2010 Staff Report in Case No. 11-2363 be rolled forward to the 2013 compliance year.
- (8) NextEra's baseline for the 2011 compliance year should be 999,907 MWHs.
- (9) NextEra has retired RECs via its GATS reserve subaccount towards its 2011 AEPS compliance obligations.
- (10) Given the stipulated 2011 compliance year baseline of 999.907 MWHs, the company is short of compliance relative to Ohio S-RECs, Other S-RECs, Ohio RECs, and Other RECs.

- (11) NextEra has under complied with its 2011 AEPs compliance obligations as detailed on Ex. 1 to the Staff's Findings and Recommendations in Case No. 12-1285.
- (12) As an alternative to assigning a compliance payment for the 2011 compliance year, the Commission should require that the shortfalls detailed on Exhibit 1 to the 2011 Staff Report in Case No. 12-1285 be rolled forward to the 2013 compliance year.
- (13) NextEra will be precluded from raising the cost provision contained within Section 4928.64(C)(3), Revised Code, as pertaining to its adjusted AEPs obligations for the 2013 compliance year.
- (14) RECs and S-RECs retired via the GATS reserve subaccount for the 2013 compliance year should first be applied to the specific 2010 and 2011 compliance shortfalls. A failure to retire an adequate volume of RECs and S-RECs to address prior deficiencies shall result in the imposition of the appropriate proportion of compliance payments as detailed in the 2011 Staff Report in Case No. 12-1285.
- (15) For future compliance years in which NextEra utilizes GATS to demonstrate its Ohio compliance efforts, NextEra shall initiate the transfer of the appropriate RECs and S-RECs to its GATS reserve subaccounts between March 1 and April 15 in order to precede the filing of its Ohio annual compliance status reports with the Commission.

### III. Consideration of the Stipulation

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30,

1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

Staff witness Stuart M. Siegfried testified that the stipulation is the product of serious bargaining among capable, knowledgeable parties. Mr. Siegfried added that the stipulation, as a package, benefits ratepayers and the public interest (Tr. at 8-10). In addition, Mr. Siegfried stated that the stipulation does not violate any important regulatory principle or practice (*Id.* at 9). Further, Mr. Siegfried opined that the stipulation would retain the policy objectives that are inherent in the AEPS while at the same time affording the company with the opportunity to satisfy its compliance obligations at a lower overall cost (*Id.*).

The Commission finds that the stipulation entered into by the parties is reasonable and should be adopted. Based on our review of the three-pronged test, the Commission finds the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. The Commission finds that the stipulation filed in this case appears to be the product of serious bargaining among capable, knowledgeable parties. In addition, the stipulation also meets the second criterion. As a package, the stipulation advances the public interest by resolving all the issues raised in this matter without resulting in extensive litigation. Finally, the stipulation meets the third criterion because it

does not violate any important regulatory principle or practice. *Consumers' Counsel*, supra, at 126. Accordingly, we find that the stipulation is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) NextEra is an electric services company as defined in Section 4928.01(A)(9), Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On April 15, 2011, NextEra filed its 2010 alternative energy portfolio status report in Case 11-2363.
- (3) On April 19, 2012, as amended on January 9, 2013, and January 14, 2013, NextEra filed its 2011 alternative energy portfolio status report in Case No. 12-1285.
- (4) On July 15, 2013, Staff filed its Finding and Recommendations relative to NextEra's 2010 alternative energy portfolio status report.
- (5) On July 18, 2013, Staff filed its Finding and Recommendations on NextEra's 2011 alternative energy portfolio status report.
- (6) A stipulation signed by Staff and NextEra was filed on August 23, 2013.
- (7) An evidentiary hearing in this matter was held on August 28, 2013.
- (8) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the stipulation be adopted and approved. It is, further,

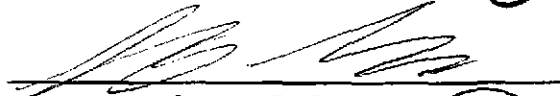
ORDERED, That NextEra take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

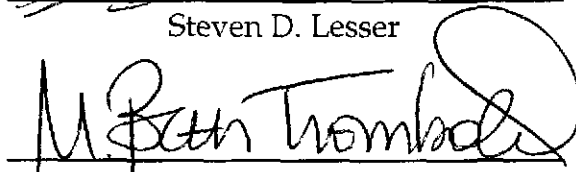
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

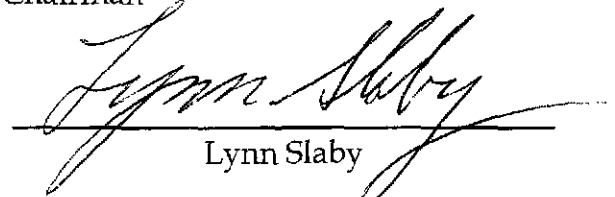
ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
M. Beth Trombold

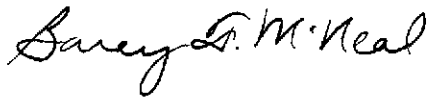
  
Lynn Slaby

  
Asim Z. Haque

JSA/vrm

Entered in the Journal

**OCT 23 2013**



Barcy F. McNeal  
Secretary