

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's	)	
Alternative Energy Portfolio Standard	)	Case No. 13-1909 -EL-ACP
Report to the General Assembly for the	)	
2012 Compliance Year.	)	

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**FIRSTENERGY SOLUTIONS CORP. SUBMISSION IN RESPONSE TO OCTOBER 29,  
2013 ENTRY OF THE ATTORNEY EXAMINER**

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On October 29, 2013, the Attorney Examiner directed each electric distribution company and each electric services company with a 2012 AEPS compliance requirement to file in this docket information relating to its 2012 Renewable Energy Credit (“REC”) costs (the “Order”).<sup>1</sup> FirstEnergy Solutions Corp. (“FES”) is unable to provide the information requested by the Order, and objects to any interpretation of R.C. § 4928.64(D)(1)(b) which suggests that CRES providers are legally obligated to provide this information to the Commission.

**I. FES Is Unable To Provide The Information Requested.**

The Order requests that CRES providers file “the average cost data for the RECs that it has retired, or will be retiring” for the 2012 year.<sup>2</sup> FES is unable to provide this information because it does not track the average costs of its RECs and does not procure RECs from purchases only. Instead, FES purchases RECs from the market, through contractual agreements which include both RECs and other products, and self-produces RECs in a variety of ways. FES is unable to provide reliable cost data for all four categories of RECs in light of these disparate methods of production. For example, it is unclear whether self-produced RECs should be

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<sup>1</sup> See October 29, 2013 Order of Attorney Examiner, ¶ 3.

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

reported by marginal cost, adjusted marginal cost, full embedded cost, or then current market value. Similarly, FES is unable to determine in a reliable manner the REC costs associated with purchased power agreements that include environmental attributes as one component of the purchase price. Because FES does not track its average REC costs and is unable to reasonably calculate these costs, whatever partial data FES could provide would not assist the Commission in satisfying its reporting obligation to the General Assembly. Thus, FES hereby advises the Commission that it will not provide the information requested.

**II. FES Objects To Any Suggestion That CRES Providers Are Required To Provide REC Average Cost Data Which They Do Not Track In The Ordinary Course Of Their Business.**

FES objects to any interpretation of R.C. § 4928.64(D)(1)(b) which suggests that CRES providers are legally obligated to provide data to the Commission so that the Commission can satisfy its reporting obligation. R.C. § 4928.64(D)(1)(b) imposes a reporting obligation on the Commission, which it may satisfy with information that is either readily available or voluntarily provided to it. Indeed, because the General Assembly seeks only the Commission's description of an average annual cost of RECs purchased during a calendar year, the Commission may provide this information through the use of market reports, such as SREC Trade<sup>3</sup> and Flett Exchange<sup>4</sup>, and/or through aggregation of data voluntarily provided. R.C. § 4928.64(D)(1)(b) does not impose a reporting obligation on CRES providers to supply data to the Commission.

Moreover, R.C. § 4928.64(D)(1)(b) does not impose an obligation on CRES providers to create data not otherwise maintained in the ordinary course of business simply to satisfy a Commission reporting obligation. CRES providers are not electric utilities. CRES providers are not subject to the same Commission oversight of their purchases and accounting records as are

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<sup>3</sup> <http://www.srectrade.com>

<sup>4</sup> <http://markets.flettexchange.com/ohio-srec/>

electric utilities. As such, no provision of Ohio law obligates CRES providers to create REC average annual cost data and then to provide that data to the Commission. The lack of such authority is not surprising given that the General Assembly's policy is to reduce governmental interference in Ohio's electric generation markets.

Staff has access to the market resources referenced above and to PJM's Generation Attribute Tracking System ("GATS"), which tracks generators' electric output for the issuance of applicable RECs. GATS also tracks the ownership of those RECs through their use by an electric utility for state Renewable Portfolio Standard compliance. As Staff already has access to the resources necessary to satisfy the Commission's reporting obligations, there is no justification for requiring CRES providers to create additional data and to provide that data to the Commission.

### **III. Conclusion**

Due to the variety of ways which it obtains RECs, FES is unable to provide the data requested by the Order. In addition to being unable to respond, FES objects to any interpretation of R.C. § 4928.64(D)(1)(b) which would suggest that FES is required to create this information and provide it to the Commission.

Respectfully submitted,

/s/ Mark A. Hayden  
Mark A. Hayden (0081077)  
Associate General Counsel  
Scott J. Casto (0085756)  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
(330) 761-7735  
(330) 384-3875 (fax)  
haydenm@firstenergycorp.com  
scasto@firstenergycorp.com

James F. Lang (0059668)  
N. Trevor Alexander (0080713)  
CALFEE, HALTER & GRISWOLD LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, Ohio 44114  
(216) 622-8200  
(216) 241-0816 (fax)  
jlang@calfee.com  
talexander@calfee.com

*Attorneys for FirstEnergy Solutions Corp.*

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Summary: Response to October 29, 2013 Entry of the Attorney Examiner electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.