

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the)
Retail Electric Supply Association for an)
Amendment to the 2009 Solar Energy) Case No. 10-428-EL-ACP
Resource Benchmark Pursuant to Section)
4928.64(C)(4), Revised Code.)

FINDING AND ORDER

The Commission finds:

- (1) Pursuant to Amended Substitute Senate Bill No. 221, benchmarks were established for electric services companies to acquire a portion of their electricity supply for retail customers in Ohio from renewable energy resources, as set forth in Section 4928.64, Revised Code. Section 4928.64(B)(2), Revised Code, and Rule 4901:1-40-03(A)(2), Ohio Administrative Code (O.A.C.), provide that, for 2009, a portion of the electricity sold by means of retail electric sales in Ohio must come from alternative energy resources, including 0.004 percent from solar energy resources. This requirement increases to 0.010 percent for 2010.
- (2) On April 2, 2009, several members of the Retail Electric Supply Association (RESA) that are also certified Ohio competitive retail electric service (CRES) providers (collectively, RESA CRES providers¹) filed an application to amend their 2009 Solar Energy Resource (SER) benchmarks. The RESA CRES providers explain that because they accounted for a significant portion of the retail sales of the Columbus Southern Power Company (CSP), the Ohio Power Company (OP) (jointly, AEP-Ohio), the Toledo Edison Company (TE), the Ohio Edison Company (OE), and the Cleveland Electric Illuminating Company (CEI) (collectively, FirstEnergy) service territories, they faced the same inability to obtain solar renewable energy credits (S-RECs) as those utilities. The RESA CRES providers, therefore, argue that because the Commission determined that *force majeure*

¹ RESA CRES providers include Constellation NewEnergy, Inc., Direct Energy Business, LLC, Gexa Energy, Integrys Energy Services, Inc., and Sempra Energy Solutions LLC.

conditions existed as to the availability of S-RECs for AEP-Ohio and FirstEnergy, and the RESA CRES providers experienced the same difficulties as AEP-Ohio and FirstEnergy in procuring S-RECs, the Commission should also determine that a *force majeure* condition existed in 2009 for purposes of the RESA CRES providers. The RESA CRES providers ask the Commission to waive the 2009 SERs, and increase the renewable energy credit requirement for 2010 to include the number of S-RECs equal to baseline sales for both calendar years 2009 and 2010 by April 15, 2011. The RESA CRES providers also requested expedited review of their application, in light of the fact that the 2009 renewable energy reports were due on April 15, 2010.

- (3) Section 4928.64(C)(4), Revised Code, permits the Commission to find that an insufficient quantity of renewable energy resources was reasonably available in the market to facilitate an electric services company's compliance with minimum benchmarks. The section further provides that the Commission shall consider the electric service company's good faith effort to acquire sufficient solar energy resources to comply with the minimum benchmark, and the availability of renewable energy or solar energy resources in Ohio or other jurisdictions within PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator.
- (4) In support of their application, the RESA CRES providers contend that they should be granted a compliance postponement because of the difficulty they have encountered in securing S-RECs. They contend that renewable energy resources are not reasonably available in the market to allow electric utilities or electric service companies to comply with the minimum benchmark requirements. The RESA CRES providers argue that this condition is apparent from the *force majeure* condition determinations that the Commission has made for AEP-Ohio and FirstEnergy, and the pending requests for *force majeure* determinations by the Dayton Power & Light Company and its CRES affiliate, DPL Energy Resources, Inc.

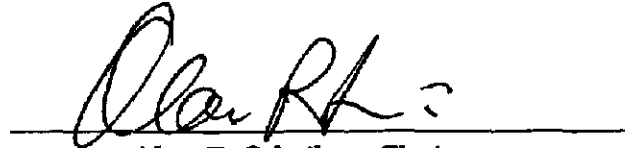
- (5) The Commission recognizes that its certification process for S-RECs was in its infancy in 2009 and, as such, a limited number of S-RECs were available. We also recognize that the question of some electric utilities and electric services companies as to whether the SER benchmarks are annual requirements or imposed as of 2025 was only answered at the end of 2009 by the Commission's rules. Those rules, included in the Alternative Energy Portfolio Standards at Chapter 4901:1-40, Ohio Administrative Code, did not become effective until December 10, 2009. As a result thereof, key issues regarding renewable energy facilities, renewable energy credits, and qualified resources were finalized late in 2009, a factor which is beyond the RESA CRES providers' control. In light of the uncertainty regarding the Commission's compliance requirements for 2009, and given that, as the RESA CRES providers request, any shortfall for 2009 compliance requirements will be added to and included as part of the their compliance requirements for 2010, we find that the RESA CRES providers have presented adequate reason for the Commission to grant their request to invoke *force majeure* and revise their 2009 SER benchmarks. Accordingly, we find that the RESA CRES providers' application is reasonable and should be granted.

It is, therefore,

ORDERED, That RESA CRES providers' request for a *force majeure* waiver of 2009 SER benchmarks be granted and, to the extent that the RESA CRES providers did not comply with the 2009 SER benchmarks, the 2010 SER benchmarks be increased. It is, further,

ORDERED, That a copy of this entry be served upon all interested persons of record in this case.

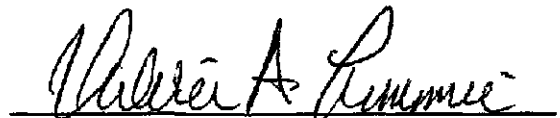
THE PUBLIC UTILITIES COMMISSION OF OHIO



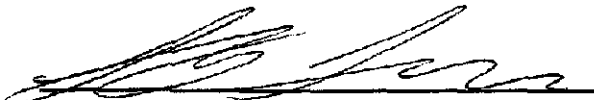
Alan R. Schriber, Chairman



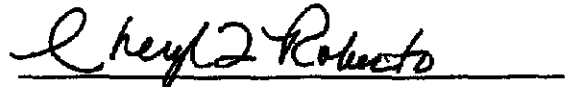
Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser

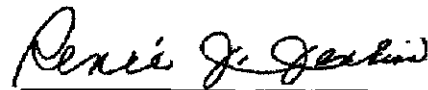


Cheryl L. Roberto

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Entered in the Journal

APR 28 2010



Renee J. Jenkins
Secretary