

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Ohio Edison)	
Company, Cleveland Electric Illuminating)	
Company, and the Toledo Edison)	Case No. 10-499-EL-ACP
Company's Annual Alternative Energy)	
Portfolio Status Report and 2009 Annual)	
Compliance Review.)	

**COMMENTS ON FIRSTENERGY'S 2009 ANNUAL ALTERNATIVE ENERGY
PORTFOLIO STATUS REPORT
BY
THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

I. INTRODUCTION

On April 15, 2010, the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively "FirstEnergy" or "Companies") filed an Alternative Energy Portfolio Status Report ("Status Report") to show, for calendar year 2009, whether they are fulfilling the requirements of Ohio's new energy law for bringing the benefits of renewable energy, including solar power, to Ohioans. The undersigned members of the Ohio Consumers and Environmental Advocates ("OCEA") file these comments on the Companies' Status Report.¹

The Companies assert that the Renewable Energy Benchmark required by R.C. 4928.64, and the Companies' Solar Energy Benchmark, as amended by a Commission order, were satisfied.² Indeed, readers of the Status Report will learn of FirstEnergy's

¹ Ohio Adm. Code 4901:1-40-05(B).

² *In the Matter of The Ohio Edison Company, Cleveland Electric Illuminating Company, and the Toledo Edison Company's Annual Alternative Energy Portfolio Status Report*, Case No. 10-499-EL-ACP, Report at 3 (April 15, 2010).

self-professed efforts to “ignite and advance Ohio’s marketplace for alternative energy resources.”³

While the Companies were successful in acquiring the non-solar renewable energy credits (“RECs”) required for compliance in 2009, the Companies’ efforts to obtain solar renewable energy credits (“SRECs”) were inadequate for several reasons discussed below.⁴ It is inaccurate on the part of FirstEnergy, with regard to SRECs, to describe these efforts as “aggressive”⁵ or “extensive.”⁶ The Commission should address these inadequacies as part of its review of the Status Report, in order to resolve issues that necessitated the Companies’ 2009 solar force majeure request (to be excused from meeting the requirements in law).⁷ As stated in Ohio Adm. Code 4901:1-40-05(A), FirstEnergy must include information in this report that will “demonstrate how the applicable alternative energy portfolio benchmarks and requirements have or will be met.” Thus, the undersigned OCEA members respectfully submit comments for consideration as part of the PUCO’s review process outlined in Ohio Administrative Code 4901:1-40-05(B), (C) and (D), to underscore outstanding issues regarding FirstEnergy’s methods for obtaining SRECs and that still require resolution, in order to prevent another year of underachievement by the Companies in this area.

³ Status Report at 5 (April 15, 2010).

⁴ SRECs are equal to one megawatt hour of solar energy generation.

⁵ Id. at 3.

⁶ Id. at 4.

⁷ *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Approval of a Force Majeure Determination for a Portion of the 2009 Solar Energy Resources Benchmark Requirement*, Case No. 09-1922-EL-EEC, Company Application for Force Majeure determination by the PUCO (December 7, 2009).

II. COMMENTS

According to Ohio Adm. Code 4901:1-40-05(A), “[E]ach electric utility and electric services company shall file...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.” To comply with the rule, FirstEnergy must submit the following information as part of the annual alternative energy portfolio status report:

- (1) Beginning in the year 2010, the annual review will include compliance with the most recent applicable renewable- and solar-energy resource benchmark.

* * * *

- (3) The annual compliance reviews shall consider any under-compliance an electric utility or electric services company asserts is outside its control, including but not limited to, the following:
 - (a) Weather-related causes.
 - (b) Equipment shortages for renewable or advanced energy resources.
 - (c) Resource shortages for renewable or advanced energy resources.⁸

FirstEnergy asserts that it has complied with Ohio Adm. Code 4901:1-40-05(A) and met the 2009 renewable benchmarks established by Amended Senate Bill 221 (“SB 221”).⁹ That is correct.

As part of their conclusion, the Companies note that they did not actually comply with the Ohio Solar benchmark in the law; they met a lower standard. The lower

⁸ Ohio Adm. Code 4901:1-40-05(A).

⁹ Status Report at 3.

standard was the result of the Commission's granting of the Companies' request to lower the requirement for solar power in 2009.¹⁰ Using the numbers from Status Report Appendix A, it can be seen that the lower standard is indeed much lower than the standard in the law, with a reduction in SRECs from 1,886 to 61, or a decrease of 97%.¹¹ Although FirstEnergy blames the inability to obtain SRECs on "scarcity,"¹² the compliance shortfall may also be attributed to deficiencies in the Companies' methods used to acquire the SRECs that the Governor and the Ohio General Assembly expected as benchmarks when enacting the law.

The deficiencies with FirstEnergy's SREC obtainment efforts were previously documented in the Companies' Force Majeure Application case, where FirstEnergy sought and obtained the reduction in the standard for solar power.¹³ First, the Companies did not begin soliciting for SRECs until July of 2009 – halfway through the calendar year, and a full year after SB 221 was passed.¹⁴ FirstEnergy issued a second RFP in September 2009.¹⁵ In these RFPs FirstEnergy sought to purchase *only* immediately available, current vintage year RECs. As presented in OCEA's Comments, this approach

¹⁰ *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Approval of a Force Majeure Determination for a Portion of the 2009 Solar Energy Resources Benchmark Requirement*, Case No. 09-1922-EL-EEC, Finding and Order at 4 (March 10, 2010).

¹¹ Status Report, Appendix A.

¹² Status Report at 4.

¹³ See, *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Approval of a Force Majeure Determination for a Portion of the 2009 Solar Energy Resources Benchmark Requirement*, Case No. 09-1922-EL-EEC, Comments in Opposition by the Ohio Consumers' Counsel, Ohio Environmental Council, Environmental Law and Policy Center, Citizen Power, the Vote Solar Initiative, and the Solar Alliance (OCEA) (March 9, 2010).

¹⁴ Force Majeure Application, Case No. 09-1922-EL-EEC, Company Application at 14 (December 7, 2009).

¹⁵ *Id.*

was outside of industry practice, and thus not an effective method of pursuing SRECs or spurring solar development.¹⁶

In addition, FirstEnergy refused to enter into any long-term SREC contracts, which thwarted any interest by solar developers.¹⁷ Long-term SREC agreements would have provided the financial stability sought by a developer to encourage the construction of solar facilities. Long-term agreements would also assist in providing a long-term foundation for FirstEnergy's yearly mandated solar benchmarks. However, the Companies refused to consider this option.¹⁸ These limited solicitations did not, in FirstEnergy's self-promoting words, "ignite" the Ohio solar energy market. In fact, these limited solicitations were a cause of FirstEnergy's diminished SREC total.

The Status Report also mentions that FirstEnergy employed a residential Renewable Energy Credit purchase program as a means of obtaining SRECS.¹⁹ This program also had a number of problems, the most notable being that it was not readily available to customers via FirstEnergy's website until May 7, 2010.²⁰ Now that it is available, the Companies should make efforts to market this program to applicable customers. Missed opportunities by the Companies to obtain Residential and other SRECs were documented in the OCEA Comments.²¹ FirstEnergy's process for acquiring SRECs from residential and other applicable FirstEnergy customers should be reviewed

¹⁶ Force Majeure Application, OCEA Comments at 8 (March 9, 2010).

¹⁷ Force Majeure Application, Company Application at 12.

¹⁸ Id.

¹⁹ Status Report at 4.

²⁰ See, <http://www.firstenergycorp.com/corporate/OHinterconnection.html>

²¹ Force Majeure Application, OCEA Comments at 13-15 (March 9, 2010).

to ensure that the process is a viable means for the Companies to take advantage of SREC purchase opportunities existing within their territories.

These deficiencies must be addressed sooner rather than later, for a number of reasons. First, the Commission noted that the Force Majeure Application “was contingent upon FirstEnergy meeting revised 2010 SER benchmarks.”²² Thus, the Companies must make up the significant 2009 shortfall during the current year in addition to the 2010 benchmark. FirstEnergy must maximize the potential of the RFP process and the residential SREC purchase program in order to make up the 2009 deficit and achieve the benchmarks required for calendar year 2010.

Second, if these two methods are not capable of producing sufficient quantities of SRECs, FirstEnergy must quickly find other ways to comply with the law. As stated in the Force Majeure Order, “FirstEnergy is responsible for meeting the statutory SER benchmarks through *all means available*, if the RFP proves not to be a viable means to meet the statutory requirement.”²³ Thus, the Commission must review the current processes now, rather than at the end of the year toward implementing a regulatory solution to FirstEnergy’s inadequate response to the State’s vision for Ohio’s energy future.

III. CONCLUSION

Real efforts must be employed by FirstEnergy in order to breathe life into its words to “ignite and advance” renewable energy development in Ohio. It is the State’s policy to encourage a “diversity of electric supplies and suppliers” and “distributed and

²² Force Majeure Application, Finding and Order at 4 (March 10, 2010).

²³ (Emphasis added). Id.

small generation facilities.”²⁴ As said in OCEA’s Comments in the “Force Majeure” case where FirstEnergy sought and obtained a PUCO waiver of the solar benchmark for 2009, other Ohio electric utilities have made serious efforts to comply with the solar mandate.²⁵ AEP constructed two solar installations and purchased 156 SRECs.²⁶ Dayton Power & Light purchased 319 SRECs and plans to construct a 1.1 MW solar field.²⁷ The undersigned members of OCEA encourage FirstEnergy to take the appropriate steps to comply with the benchmarks or face the risk of being penalized for noncompliance. To help FirstEnergy meet that goal and to also provide opportunities to assist residential customers in purchasing solar power, FE should add to its plan an indefinite commitment to the residential solar REC program as this will also help ignite and advance economic development in the state of Ohio.

In addition, OCEA members request the PUCO to impose now a regulatory solution for these Companies, with 1.9 million residential customers, in order to obtain compliance with the State’s new energy law and provide the Companies’ customers the energy future contemplated by the Governor and the legislature. The bottom line is that compliance is certainly achievable and any FirstEnergy failure to do so should be their responsibility.

²⁴ R.C. 4928.02(C).

²⁵ Force Majeure Application, OCEA Comments at 6 (March 9, 2010).

²⁶ See, *Columbus Southern Power’s and Ohio Power’s Application and Request for Expedited Consideration*, Case Nos. 09-987-EL-EEC and 09-998-EL-EEC (October 26, 2009).

²⁷ See, *DP&L Application for a Force Majeure Determination*, Case No. 09-1989-EL-ACP (December 23, 2009).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing
Comments on the following counsel, by electronic transmission this 17th day of May
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Summary: Comments Comments on FirstEnergy's 2009 Annual Alternative Energy Portfolio Status Report by the Ohio Consumer and Environmental Advocates electronically filed by Ms. Deb J. Bingham on behalf of ALLWEIN, CHRISTOPHER J