

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of Ohio</b>	)	
<b>Edison Company, The Cleveland</b>	)	<b>Case No. 11-0411-EL-ACP</b>
<b>Electric Illuminating Company and The</b>	)	
<b>Toledo Edison Company for Approval</b>	)	
<b>of a Force Majeure Determination for a</b>	)	
<b>Portion of the 2010 Solar Energy</b>	)	
<b>Resources Benchmark Requirement</b>	)	
<b>Pursuant to Section 4928.64(C)(4) of the</b>	)	
<b>Ohio Revised Code and Section 4901:1-</b>	)	
<b>40-06 of the Ohio Administrative Code.</b>		

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**APPLICATION**

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Pursuant to R.C. § 4928.64(C)(4) and O.A.C. § 4901:1-40-06, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, “the Companies”) hereby request that the Commission make a force majeure determination regarding the Companies’ compliance with the solar energy resources (“SER”) benchmark for calendar year 2010. The SER benchmark is set out in R.C. § 4928.64(B)(2) and O.A.C. § 4901:1-40-03 and mandates that 0.01 percent of the electricity supply required for the Companies’ standard service offer in 2010 be generated from solar energy resources. Further, pursuant to the Commission’s March 10, 2010 Order in Case No. 09-1922-EL-ACP (“March 10<sup>th</sup> Order”)<sup>1</sup>, the Companies’ SER benchmark for calendar year 2010 was revised to include the shortfall for the SER benchmark for calendar year 2009. The SER benchmark for calendar year 2010, as revised, represents 3,206 solar renewable energy credits (“SRECs”) originating in Ohio

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<sup>1</sup> See Finding and Order, issued Mar. 10, 2010, in Case No. 09-1922-EL-ACP.

("Ohio Solar Benchmark") and 3,170 SRECs that may originate in Ohio or that can be shown to be deliverable into Ohio ("Out-of-State Benchmark").

The Companies implemented an aggressive strategy to meet their Ohio Solar Benchmark and Out-of-State Benchmark and are pleased to announce that through a persistent effort they have successfully met their Out-of-State Benchmark (which includes the shortfall from the 2009 calendar year). However, for reasons beyond their control and through no fault of their own, the Companies have been unable to meet their Ohio Solar Benchmark. The Companies procured 112 of the 3,206 SRECs needed to satisfy their Ohio Solar Benchmark.<sup>2</sup> Although the Companies have pursued a variety of channels available to procure SRECs, sufficient SRECs originating in Ohio ("Ohio SRECs") simply have not been available for purchase by the Companies. For example, the Companies sponsored three requests for proposal ("RFP"), solicited known suppliers for SRECs, contacted SREC brokers, and participated in a number of SREC auctions. Thus, the Companies request that the Commission act pursuant to R.C. § 4928.64(C)(4) and O.A.C. § 4901:1-40-06 to reduce, because of force majeure, the Companies' Ohio Solar Benchmark to the level of SRECs they have purchased towards their Ohio Solar Benchmark.

In support of this application, the Companies state the following:

1. The Companies are "electric distribution utilities" as defined in R.C. § 4928.01(A)(6) and as used in R.C. Chapter 4928.
2. R.C. § 4928.64(B) provides that the baseline for a utility's compliance with the alternative energy resource requirements shall be the average of the total kilowatt hours it sold in

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<sup>2</sup> The Companies have only counted SRECs that have been delivered. If all SRECs under contract (including SRECs to be delivered from the Companies' residential renewable energy credit purchase

the preceding three calendar years. R.C. § 4928.64(B)(2) sets the SER benchmark for calendar year 2010 at 0.010 percent of that electricity supply.

3. In Case No. 08-935-EL-SSO, the Commission approved the Companies' stipulation that their renewable energy resource requirements for the period January 1, 2009 through May 31, 2011 will be met using an RFP process to obtain renewable energy credits.<sup>3</sup> R.C. § 4928.65 permits usage of renewable energy credits for compliance with the requirements of R.C. § 4928.64.

4. In its March 10<sup>th</sup> Order, the Commission in consideration of an application filed by the Companies for force majeure ("2009 Filing"), amended the Companies' SER benchmark for calendar year 2010 to include the shortfall of the SER benchmark for calendar year 2009 and noted that the Companies were "responsible for meeting the statutory SER benchmarks through all means available" if their RFP process proved not to be a viable means to meet the statutory requirement.<sup>4</sup>

5. The Companies have acquired sufficient SRECs to meet their Out-of-State Benchmark (including the shortfall from the 2009 calendar year), but have calculated that they do not have sufficient SRECs to satisfy their Ohio Solar Benchmark. Each SREC is equivalent to 1 MWh of electricity derived from solar energy resources.

6. The Companies actively and aggressively pursued SRECs for 2010. As stated above, this effort included sponsoring three RFPs, reaching out to known SREC suppliers and

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program) are delivered, then the Companies believe they will have an additional 145 Ohio SRECs to count toward compliance with their Ohio Solar Benchmark.

<sup>3</sup> See March 10<sup>th</sup> Order at p. 2, 4.

<sup>4</sup> See *id.* at p. 4.



brokers to negotiate short term and long term bilateral agreements, and participating in several SREC auctions.

7. The Companies' RFPs were managed by the independent manager, Navigant Consulting, Inc. ("NCI"). NCI has extensive experience with SREC RFPs and was engaged to conduct two RFPs in 2009 and one RFP in 2010, all of which included a solicitation for calendar year 2010 SRECs. The Companies documented in their 2009 Filing NCI's extensive efforts for the two RFPs held in 2009.<sup>5</sup> In furtherance of NCI's engagement for the RFP in 2010, NCI contacted more than two thousand clean energy/solar developers, marketers, owners, aggregators, and brokers. NCI blanketed the State of Ohio and contiguous states with information regarding the Companies' RFP and conducted extensive outreach efforts. NCI also personally contacted via telephone nearly five hundred parties known or expected to have solar facilities. On July 15, 2010, NCI hosted an RFP informational session through a webinar in which approximately 100 participants registered. As a result of the two RFPs held in 2009 and the one held in 2010, the Companies received offers and procured 181 SRECs that will be applied against the Companies' Ohio Solar Benchmark (the Companies anticipate the delivery of many of these SRECs in February 2011) and 759 SRECs that will satisfy in part the Companies' Out-of-State Benchmark. The Companies also procured 5,626 SRECs that will be used to help satisfy the Companies' benchmarks in 2011.

8. Following the 2010 RFP, the Companies did not have sufficient SRECs to meet either the Out-of-State Benchmark or the Ohio Solar Benchmark. As a result, the Companies reached out to known SREC suppliers and brokers to negotiate bilateral agreements, and

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<sup>5</sup> The description of those efforts can be found at pages 3 through 6 of the Companies' Application in Case No. 09-1922-EL-EEC (later designated as Case No. 09-1922-EL-ACP), which description is incorporated herein by reference.

established accounts to participate in the following SREC auctions: PJM Envirotrade SREC auction Platform (also referred to as “SAGE”), the SREC Trade Platform (“SREC Trade”), and the Flett Exchange auction Platform (“Flett”). The Companies communicated and interacted with these entities on a regular basis seeking to purchase SRECs as they became available to satisfy both their Ohio Solar Benchmark and Out-of-State Benchmark. On December 7, 2010, the Companies procured the remaining SRECs necessary to fulfill their Out-of-State Benchmark. The Companies remain short 3,094 Ohio SRECs to comply with their Ohio Solar Benchmark.

9. The Companies also have available a residential renewable energy credit purchase program whereby customers may install on their property renewable energy resources, including solar resources. Although this program has generated customer interest, the capital investment required in these tough economic times has made it difficult for a number of customers to install a renewable energy resource on their property. The Companies have eight customers currently under contract and anticipate obtaining up to 40 Ohio SRECs from this program.<sup>6</sup>

10. In addition, the Companies considered long term contracts but could not negotiate a contract that would provide SRECs for the 2010 calendar year. On December 2, 2010, the Companies filed an application with the Commission for approval to conduct an RFP to purchase renewable energy credits through ten-year contracts. If this application is approved and the RFP is successful, such Ohio SRECs will be used towards meeting future compliance requirements.

11. Despite this extensive outreach and exhaustive effort that garnered sufficient SRECs to meet the Companies’ Out-of-State Benchmark, the Companies could procure only 112

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<sup>6</sup> These SRECs have not been delivered to the Companies and thus were not included in the total amount of SRECs the Companies have procured to comply with their Ohio Solar Benchmark.

SRECs to comply with their Ohio Solar Benchmark.<sup>7</sup> This includes the two RFPs during 2009, the 2010 RFP, working with suppliers and brokers, and participating in a number of SREC auctions. This leaves a deficit of Ohio SRECs of 1,387 for Ohio Edison Company, 1,115 for The Cleveland Electric Illuminating Company, and 592 for The Toledo Edison Company needed to satisfy the Ohio Solar Benchmark.

12. Pursuant to R.C. § 4928.64(C)(4), the Commission is empowered to make a determination that force majeure conditions exist, and to modify the compliance obligation of the electric utility to accommodate the finding. In requesting such a determination, O.A.C. § 4901:1-40-06(A) requires that an electric utility demonstrate that it pursued all reasonable compliance options including, but not limited to, SREC RFPs, SREC banking, and long-term contracts. It also directs the electric utility to provide an assessment of the availability of qualified in-state resources.

13. The Companies have actively and reasonably pursued all options of procuring Ohio SRECs, banked Ohio SRECs and long-term contracts (and have not refused to purchase any Ohio SRECs offered to them) through the RFPs, contacts with suppliers, offers by brokers, and successful bids through the auction platforms. Yet, through no fault of their own, they have not been able to meet their Ohio Solar Benchmark. The Companies' continuing active pursuit of compliance, coupled with an intensive market analysis conducted by NCI, demonstrates that force majeure conditions exist to excuse compliance with the Ohio Solar Benchmark.

14. Further, the Companies have performed or requested a number of assessments of the Ohio market for the availability of qualified Ohio SRECs. Specifically,

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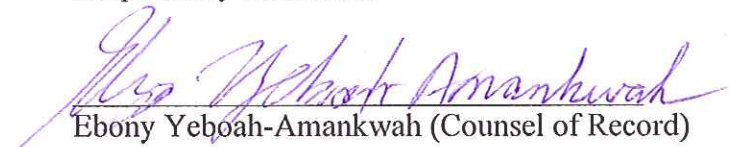
<sup>7</sup> See footnote 2.



- (i) the Companies directed NCI, in connection with their RFPs in 2009 and 2010, to assess the availability of qualified Ohio SRECs. NCI concluded that the Ohio SREC market is constrained,
- (ii) the Companies requested an Ohio SREC market assessment from SREC Trade. SREC Trade informed the Companies that there were relatively few solar renewable resources in operation in Ohio, and
- (iii) the Companies performed their own assessment and found that the market data they obtained from Flett evidenced a constrained market for Ohio SRECs, and that few suppliers were currently participating in SAGE.

15. Therefore, the Companies respectfully request that the Commission (i) make a force majeure determination regarding their Ohio Solar Benchmark and (ii) reduce the Companies' aggregate Ohio Solar Benchmark to the 112<sup>8</sup> Ohio SRECs the Companies acquired through diligent efforts made in 2010.

Respectfully submitted,



Ebony Yeboah-Amankwah (Counsel of Record)  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
Telephone: (330) 384-5969  
Facsimile: (330) 384-3875  
eyeboah-amankwah@firstenergycorp.com

James F. Lang  
CALFEE, HALTER & GRISWOLD LLP  
1400 KeyBank Center  
800 Superior Ave.  
Cleveland, OH 44114

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<sup>8</sup> See footnote 2.

Telephone: (216) 622-8200

Facsimile: (216) 241-0816

jlang@calfee.com

ATTORNEYS FOR APPLICANTS, OHIO  
EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY AND  
THE TOLEDO EDISON COMPANY



STATE OF OHIO

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: ss.

VERIFICATION

COUNTY OF SUMMIT

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The undersigned John E. Paganie affirms and verifies that he has read the factual statements of the Application, that they are based on personal knowledge and/or information communicated to him by personnel of the Companies and NCI and from records in the possession of the Companies, and that said statements are true to the best of his knowledge and belief.

  
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JOHN E. PAGANIE

SWORN TO BEFORE ME and subscribed in my presence by John E. Paganie, a person known to me, this 27<sup>th</sup> day of January, 2011.

  
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NOTARY PUBLIC

EBONY L. MILLER, Attorney-At-Law  
Notary Public – State of Ohio  
My commission has no expiration date.  
Section 147.03 O.R.C.

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

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**in**

**Case No(s). 11-0411-EL-ACP**

Summary: Application 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 2010 Solar Energy Resources Benchmark Requirement Pursuant to Section 4928.64(C)(4) of the Ohio Revised Code and Section 4901:1-40-06 of the Ohio Administrative Code. electronically filed by Ms. Ebony L Miller on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company