

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of Ohio Edison Company,    )  
The Cleveland Electric Illuminating       )  
Company and the Toledo Edison            )  
Company's Annual Status Report and        )  
2009 Compliance Review                    )**

**Case No. 10-0499-EL-ACP**

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Findings and Recommendations of the PUCO Staff

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**I.       Statutory Background**

Senate Bill 221, with an effective date of 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, Ohio Revised Code (ORC), with relevant resource definitions contained within 4928.01(A), ORC.

According to 4928.64(B)(2), ORC, the specific compliance obligations for 2009 are as follows:

- Renewable Energy Resources = 0.25% (includes solar carve-out)
- Solar Energy Resources = 0.004%

In addition, there is a requirement that at least half of the renewable energy resources, including the solar energy resources, shall be met through facilities located in this state.

The PUCO further developed rules to implement the Ohio AEPS, with those rules contained within Ohio Administrative Code (OAC) 4901:1-40.

4901:1-40-05(A), OAC:

Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, 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. Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.

4901:1-40-05(C), OAC:

Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.

## **II. Company Filing Summarized**

Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company (collectively, the "Companies") proposed an aggregate baseline of 47,126,378 megawatt-hours (MWHs) based on an average of their annual Ohio retail electric sales during the period of 2006 to 2008.<sup>1</sup> When broken down by distribution utility, the individual baselines are as follows:

OE: 20,889,394 MWHs

CEI: 17,166,038 MWHs

TE: 9,070,946 MWHs

With the above baselines and the 2009 statutory benchmarks, the Companies calculated their individual non-solar<sup>2</sup> compliance obligations for 2009 as follows:

OE: 51,387 MWHs, of which at least 25,694 MWHs must come from Ohio facilities

CEI: 42,228 MWHs, of which at least 21,114 MWHs must come from Ohio facilities

TE: 22,314 MWHs, of which at least 11,157 MWHs must come from Ohio facilities

Or, if looked at in the aggregate for the Companies, they calculated a need for a total of 115,929 non-solar renewable energy credits (RECs), with at least 57,965 RECs sourced from Ohio facilities, to satisfy their collective 2009 non-solar compliance obligation.<sup>3</sup> The companies assert that they achieved compliance with both the total and the in-state requirements for non-solar renewable resources for 2009. Appendix B of their filing indicates that the non-solar requirements were satisfied using RECs associated with both wind and biomass facilities.<sup>4</sup>

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<sup>1</sup> Appendix A of Companies' filing

<sup>2</sup> Staff uses "non-solar" in this context to refer to the total renewable requirement net of the specific solar carve-out. Staff acknowledges that there is not a specific "non-solar" requirement in the applicable statute.

<sup>3</sup> Appendix A of Companies' filing

<sup>4</sup> By rule, landfill gas-to-electricity is considered biomass

The filing<sup>5</sup> by the Companies indicated their unadjusted individual solar compliance obligations for 2009 are as follows:

OE: 836 MWH, of which at least 418 MWHs must come from Ohio facilities

CEI: 687 MWHs, of which at least 344 MWHs must come from Ohio facilities

TE: 363 MWHs, of which at least 182 MWHs must come from Ohio facilities

Or when aggregated for the Companies, they calculated an unadjusted need for a total of 1,886 solar RECs (S-RECs), with at least 943 S-RECs sourced from Ohio facilities, to satisfy their collective 2009 solar compliance obligation.

OE, TE, and CEI secured a total of 61 solar RECs (13 of which were sourced from Ohio facilities), as indicated on Appendix A of their filing. These 61 S-RECs left the Companies 1,825 S-RECs short of full compliance. The Companies sought and received a *force majeure* determination relative to their 2009 solar obligations in Case No. 09-1922-EL-ACP, with the Commission-imposed requirement that any shortfall of 2009 solar compliance be added to the 2010 solar requirements for these Companies.

Appendix B of the Companies' filing includes details on the specific RECs and S-RECs that the Companies indicate were used toward their 2009 AEPS compliance obligations.

The Companies conclude in their filing<sup>6</sup> that they have complied with the original non-solar requirements and the adjustment solar requirements for 2009.

### III. Filed Comments

Motions to intervene were submitted by the Ohio Environmental Council, the Office of the Ohio Consumers' Counsel, and Citizen Power, Inc. These groups (collectively referred to as "OCEA") also submitted joint-comments in this proceeding. The OCEA comments do not contest the companies' claims of compliance with the non-solar requirements or the adjusted solar requirements.<sup>7</sup> However, OCEA does offer criticism of the companies' efforts to secure the necessary solar resources. OCEA's specific criticisms included the following:

- (1) The companies should have begun soliciting S-RECs earlier in 2009.<sup>8</sup>

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<sup>5</sup> Appendix A of Companies' filing

<sup>6</sup> P. 3 of Companies' filing

<sup>7</sup> P. 3 of OCEA comments

<sup>8</sup> P. 4 of OCEA comments

- (2) The companies refused to enter into long-term contracts for S-RECs, thus limiting interest by solar developers.<sup>9</sup>
- (3) The companies' residential REC purchase program was not readily available via their website until May 7, 2010.<sup>10</sup>

OCEA argues that the above "deficiencies" must be addressed to improve future compliance efforts, particularly in light of the requirement to compensate in 2010 for any shortfall of solar resources from 2009. OCEA also endorses a continuation of the companies' residential REC program as a means of advancing economic development in the state.<sup>11</sup>

#### **IV. Staff Findings**

Following its review of the annual status report and any timely comments submitted in this proceeding, Staff makes the following findings:

- (1) OE, TE, and CEI (the "Companies") are electric utilities in Ohio with retail electric sales during 2009, and therefore they have AEPS compliance obligations for 2009.
- (2) The Companies filed their annual alternative energy portfolio status report for 2009 on April 15, 2010.
- (3) The proposed baselines for OE, TE, and CEI respectively are as follows: 20,889,394 MWHs; 9,070,946 MWHs; and 17,166,038 MWHs.<sup>12</sup> The Companies did not propose any adjustments to the 2009 baselines. Staff believes that the baselines are reasonable.
- (4) The Companies accurately computed their 2009 compliance obligations, given their proposed baselines and the 2009 statutory obligations.
- (5) Staff reviewed the Companies' GATS reserve subaccount information to confirm the details as presented in Appendix B, pages 1-4, of the Companies' filing. Staff

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<sup>9</sup> P. 5 of OCEA comments

<sup>10</sup> P. 5 of OCEA comments

<sup>11</sup> P. 7 of OCEA comments

<sup>12</sup> Appendix A of companies' filing

reviewed a sampling of the entries and confirmed that the RECs originated from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2009.

- (6) The GATS reserve subaccount contains 4,138 more non-Ohio non-solar RECs than were needed for 2009 compliance. These particular RECs were not reflected on the Companies' Appendix B, p. 1. A subsequent discussion with representatives of the Companies indicates that these 4,138 RECs were inadvertently included in the reserve subaccount for 2009. GATS representatives cite an inability to remove those RECs from the reserve subaccount as they are now considered retired.
- (7) The information in both Appendix B of the Companies' filing and the details from the GATS reserve subaccount indicate that the Companies satisfied the total non-solar compliance obligation for 2009, as well as the specific in-state non-solar requirement.
- (8) Both Appendix B and the reserve subaccount information indicate that the Companies secured 48 non-Ohio S-RECs and 13 Ohio S-RECs.
- (9) The 61 S-RECs obtained and retired by the Companies leave them 1,825 S-RECs short of complying with their unadjusted 2009 solar compliance obligation. The Companies sought and received a *force majeure* determination pertaining to their 2009 solar obligation. Consistent with the Commission decision in Case No. 09-1922-EL-ACP, Staff finds that the Companies complied with their revised solar obligation for 2009.

## **V. Staff Recommendations**

Following its review of the information submitted in this proceeding, Staff recommends the following:

- (1) That OE, TE, and CEI be found to be in compliance with their 2009 non-solar compliance obligations and their adjusted 2009 solar requirement.
- (2) That OE, TE, and CEI add their 2009 solar shortfall to their solar obligation for 2010, as per the Commission's decision in Case No. 09-1922-EL-ACP.
- (3) That the 4,138 extra non-Ohio non-solar RECs that were inadvertently retired be eligible to be counted against a future non-Ohio non-solar compliance obligation

of the Companies, provided that the timing of this usage does not conflict with 4901:1-40-04(D)(3), OAC.

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Summary: Staff Review and Recommendation electronically filed by Mr. Stuart M Siegfried on behalf of PUCO Staff