

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Annual Alternative Energy )  
Status Report of Ohio Edison Company, The )  
Cleveland Electric Illuminating Company and The )  
Toledo Edison Company )

In the Matter of the Application of Ohio Edison )  
Company, The Cleveland Electric Illuminating )  
Company and The Toledo Edison Company for a )  
Force Majeure Determination for Their In-State )  
Solar Resources Benchmark Pursuant to R.C. )  
§4928.64(C)(4)(a) )

Case No. 11-2479-EL-ACP

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**MOTION TO INTERVENE, MEMORANDUM IN SUPPORT  
AND COMMENTS OF THE SOLAR ALLIANCE**

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The Solar Alliance ("SA") moves the Public Utilities Commission of Ohio ("Commission"), pursuant to Ohio Revised Code ("O.R.C.") Section 4903.221 and Ohio Administrative Code ("O.A.C.") Rule 4901-1-11, to intervene in the above-captioned proceeding. As set forth in the Memorandum in Support, SA submits that it has a real and substantial interest in this proceeding, that it is so situated that the disposition of this proceeding without the participation of SA may impair or impede its ability to protect that interest, and that its participation in this proceeding will contribute to a just result. SA further submits that no existing party represents its interest in this proceeding and that granting its motion to intervene will not unduly delay this proceeding or unjustly prejudice any existing party.

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## MEMORANDUM IN SUPPORT

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On January 24, 2011, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively "FirstEnergy") filed an Application for a *force majeure* determination related to their respective 2009 and 2010 solar energy resource requirements under O.R.C. Section 4928.64 ("First Application").<sup>1</sup> SA intervened in that case and filed comments in opposition to FirstEnergy's *force majeure* application.<sup>2</sup> On April 11, 2011, FirstEnergy filed a Notice of Withdrawal of its First Application, and stated its intention to file a revised *force majeure* application. On April 15, 2011, FirstEnergy filed its annual status report and revised *force majeure* application ("Revised Application") in the above-captioned proceeding. SA seeks to intervene in this case and is an interested party as explained below.

SA is a state-based advocacy group of companies involved in the design, manufacture, construction and financing of PV systems. The members of SA are suppliers of alternative energy sources, potentially to Ohio electric utilities, and as such they have a real and substantial interest in these applications especially as they pertain to FirstEnergy's proposals to secure alternative energy resources as well as an interest in other issues in this proceeding. In particular, SA believes that the Commission should take into consideration additional information concerning FirstEnergy's assertions that it has made aggressive efforts to comply with the minimum benchmarks for 2009 and 2010.

Consistent with the requirements of O.R.C. 4903.221 and O.A.C Rule 4901-1-11, SA members are real parties in interest in this proceeding. SA submits that its interest is not

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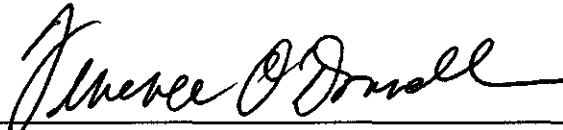
<sup>1</sup> See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Force Majeure Determination for a Portion of the 2010 Solar Energy Resources Benchmark Requirement Pursuant to Section 4928.64(C)(4) of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

<sup>2</sup> See *Id.*, Entry (March 16, 2011), and Comments in Opposition (March 4, 2011).

represented by existing parties and thus its interests are not now represented. SA's participation will not unduly delay this proceeding or prejudice any existing party. In the interest of administrative economy in this proceeding, SA requests that the Commission permit others who may wish to join with SA to intervene. By granting SA's motion to intervene, the Commission will permit SA to contribute to the just and expeditious resolution of the issues and concerns set forth in this proceeding.

WHEREFORE, The Solar Alliance respectfully requests that its motion to intervene in the above-captioned proceeding be granted and that the Commission permit others to join SA's motion to intervene at a later date.

Respectfully submitted on behalf of  
THE SOLAR ALLIANCE,



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Terrence O'Donnell  
Christopher Montgomery  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
Telephone: (614) 227-2345; 227-4885  
Facsimile: (614) 227-2390  
E-mail: [todonnell@bricker.com](mailto:todonnell@bricker.com)  
[cmontgomery@bricker.com](mailto:cmontgomery@bricker.com)

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**COMMENTS IN OPPOSITION TO FIRSTENERGY'S  
FORCE MAJEURE APPLICATION BY THE SOLAR ALLIANCE**

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**I. INTRODUCTION**

In its Revised Application, FirstEnergy once again comes before the Commission to seek a waiver of its solar requirement under Amended Substitute Bill 221 ("SB 221"). And once again, FirstEnergy is significantly short of its statutory requirement, meeting only 51 percent of its in-state benchmark for 2010, (and 75 percent overall) on the heels of meeting only 3 percent of its total solar requirement in 2009.

FirstEnergy makes substantially the same argument as it made in its 2009 *force majeure* application<sup>1</sup> to support its position: that the solar market in Ohio is simply too underdeveloped to support the Company's efforts to comply with Ohio's advanced energy law. The fundamental flaw in FirstEnergy's argument, of course, is that SB 221 requires utilities to build new solar generation—not simply scour the state for systems someone else financed and constructed "on spec." The company's statutory duty is to enter into long-term contracts for solar energy resources to ensure the state's energy portfolio includes new solar generation. As FirstEnergy acknowledges in its filing, it is now pursuing such long-term contracts for 2011 compliance.<sup>2</sup> Based on the spirit and letter of SB 221, the Solar Alliance opposes FirstEnergy's *force majeure* application and requests the Commission to enforce the law as written. The Commission should

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<sup>1</sup> 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 Pursuant to Section 4928.64(C)(4) of the Ohio Revised Code*, Case No. 09-1922-EL-EEC (later designated as Case No. 09-1922-EL-ACP), Application at 1 (December 7, 2009).

<sup>2</sup> See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Request for Proposal to Purchase Renewable Energy Credits Through Ten Year Contracts*, Case No. 10-2891-EL-ACP, Application at 1-2 (December 2, 2010).

require FirstEnergy to issue a good-faith, long-term RFP for solar energy or solar renewable energy credits (“SRECs”) immediately to cover its 2010 shortfall.

Alternatively, the Commission should require FirstEnergy to pay the renewable energy compliance payment as required by statute, in the amount of \$630,800. We note with particular concern that continued “rolling over” of the requirements into future years should not have the effect of permitting payment at subsequent years’ lower compliance payment levels. If the Commission is inclined to grant the waiver, it should follow its own precedent<sup>3</sup> and defer the Company’s 2010 shortfalls as a supplement to its existing 2011 solar mandate.

## II. APPLICABLE LAW AND FIRSTENERGY’S APPLICATION

Ohio law requires investor-owned utilities to meet annual solar benchmarks that increase every year until reaching 0.50 percent of generation by 2025.<sup>4</sup> In addition, utilities must obtain at least half of that requirement from within Ohio.<sup>5</sup> For 2009, the solar benchmark was 0.004 percent, and for 2010, it was 0.010 percent.<sup>6</sup> Utilities may achieve the benchmarks by building solar generation or through the purchase of SRECs.<sup>7</sup>

If a utility cannot meet its benchmark, the utility can apply for a waiver and

may request the commission to make a force majeure determination . . . regarding all or part of the utility’s or company’s compliance with any minimum benchmark . . . The commission may require the . . . company to make solicitations for renewable energy resource credits as part of its default service before the utility’s or company’s request of force majeure . . . can be made.<sup>8</sup> (Emphasis added).

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<sup>3</sup> See *Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company*, Case No. 09-1922-EL-ACP, Finding and Order at ¶8 (March 10, 2010). In this case, the Commission deferred FirstEnergy’s 2009 solar benchmark to 2010.

<sup>4</sup> Ohio Revised Code Section (“R.C.”) 4928.64(B)(2). See the attached chart, Ex. 1.

<sup>5</sup> R.C. 4928.64(B)(3).

<sup>6</sup> R.C. 4928.64(B)(2).

<sup>7</sup> R.C. 4928.64(B).

<sup>8</sup> R.C. 4968.64(C)(4)(a).

In considering whether to grant the *force majeure* application, the Commission must make certain determinations:

[T]he Commission shall determine if renewable energy resources are reasonably available in the marketplace in sufficient quantities for the utility or company to comply with the subject minimum benchmark during the review period. In making this determination, the commission shall consider whether the electric distribution utility or electric services company has made a good faith effort to acquire sufficient renewable energy or, as applicable, solar energy resources to so comply, including, but not limited to, by banking or seeking renewable energy resource credits or by seeking the resources through long-term contracts. Additionally, the commission shall consider the availability of renewable energy or solar energy resources in this state and other jurisdictions in the PJM interconnection regional transmission organization or its successor and the midwest system operator or its successor.<sup>9</sup> (Emphasis added).

In addition to ordering an SREC solicitation, if a utility does not meet its benchmark, the PUCO may require the utility to pay a “compliance payment” of \$450 per megawatt-hour of solar capacity not obtained in 2009 and \$400 per megawatt-hour of solar capacity not obtained in 2010.<sup>10</sup>

FirstEnergy requests the Commission grant its Application under R.C. §4928.64(C)(4), and relieve the Company from compliance with a significant proportion of its required 2010 benchmark for SRECs originating in Ohio. FirstEnergy’s cumulative Ohio Solar Benchmark requirement for 2009 and 2010 is 3,206 SRECs.<sup>11</sup> Yet FirstEnergy states it purchased only 1,629 SRECs.<sup>12</sup> Under the law, this shortfall equates to a compliance payment of \$630,800<sup>13</sup> to be deposited in the state’s advanced energy fund. FirstEnergy now seeks a *force majeure*

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<sup>9</sup> R.C. 4928.64(C)(4)(b).

<sup>10</sup> R.C. 4928.64(C)(2)(a).

<sup>11</sup> Revised Application at 5.

<sup>12</sup> *Id.* The aggregate shortfall is 1,577 SRECs. FirstEnergy states that the individual company shortfalls are 706 SRECs for Ohio Edison Co., 569 SRECs for Cleveland Electric Illuminating Co., and 302 SRECs for Toledo Edison Co. *Id.*

<sup>13</sup> The compliance payment is calculated by multiplying the 1,577 SREC shortfall for 2010 by \$400.

determination to waive the balance, citing no particular reason why offering superior contract terms would be “beyond its control.”<sup>14</sup>

### III. ARGUMENT AND COMMENTS

R.C. 4928.64(C)(4)(c) requires that the Commission determine if the necessary solar resources “are not reasonably available” for FirstEnergy to comply with its combined 2009 and 2010 Ohio Solar Benchmark. In its analysis, the Commission must determine whether FirstEnergy made “a good faith effort to acquire sufficient . . . solar energy resources to so comply, including, but not limited to, by banking or seeking renewable energy resource credits or by seeking the resources through long-term contracts.”<sup>15</sup> Applying these standards, FirstEnergy did not make the required showing of a good-faith effort.

#### A. Short Term RFPs Are Insufficient

In its Revised Application, FirstEnergy argues that “through no fault of [its] own” it was unable to comply with its 2010 Ohio Solar Benchmark.<sup>16</sup> The Company writes that despite an “aggressive” compliance strategy that included sponsoring four RFPs for short-term SRECs, contacting SREC brokers for short-term SRECs, and participating in a number of SREC auctions for short-term SRECs, it could not locate sufficient SRECs originating in Ohio.<sup>17</sup> This line of argument ignores once again that to the extent SRECs were not available, it was for a reason wholly in FirstEnergy’s control. A comprehensive effort to publicize and pursue an offer known to be inadequate to support significant investment is not a good-faith compliance effort.

The reason FirstEnergy did not secure enough SRECs through RFPs and auctions is because it chose to attempt to procure immediately available, current or previous vintage year SRECs, which could only be generated by solar systems already constructed. As FirstEnergy

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<sup>14</sup> Revised Application at 6.

<sup>15</sup> R.C. 4928.64(C)(4)(b) (emphasis added).

<sup>16</sup> Revised Application at 6.

<sup>17</sup> *Id.*

knows, to finance the construction of a solar system, solar developers must monetize both the revenue from the sale of electricity and the resulting SRECs upfront. That is, solar developers must have signed, long-term contracts for both the electricity and the SRECs before they can obtain financing from a bank and proceed to build the solar system. Because FirstEnergy solicited only immediately available SRECs, no developer was able to finance a system based on FirstEnergy's offers. Seeking only immediately available SRECs from existing systems and refusing to solicit long-term contracts required for new system construction is on its face a violation of the good-faith standard required to support a *force majeure* determination by the Commission.

FirstEnergy cites continuing uncertainty over the shopping rates of its customers as a reason to avoid long-term SREC contracting, stating that "if current shopping rates continue, the Companies' alternative energy benchmarks could either stay the same or decline."<sup>18</sup> It is worth considering that—assuming zero demand growth in the state—the 2021 solar requirements for FirstEnergy, at 0.38 percent, will be more than *ten times* larger than today's 0.03 percent. In other words, a cumulative switch rate of *greater than 90 percent of remaining unswitched load as of today, across every FirstEnergy utility*, would be required before a single REC would need to be resold from FirstEnergy to another entity having compliance needs. That is, if the cumulative switch rate to date had been 70 percent, 90 percent of the remainder, or an additional 27 percent, would need to depart to render any one SREC from today's full compliance superfluous.

**B. FirstEnergy's Residential Program is Flawed**

FirstEnergy's Ohio Residential Renewable Energy Credit ("REC") Program, which offers fifteen-year contracts to residential customers for the purchase of RECs produced by

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<sup>18</sup> *Id* at 11.



customer-sited renewable energy systems, likewise fails to meet the good-faith standard and suffers from the same defect as short-term RFPs. FirstEnergy wrote in its initial application that “[a]lthough 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.”<sup>19</sup> Across FirstEnergy’s entire Ohio territory, the Company has only *eight* customers under contract through the residential REC program and has obtained 51 SRECs.<sup>20</sup> It is worth noting that under a very similar program in New Jersey (but with the opportunity for known, fixed, ten-year contracts), New Jersey utilities have been able to award 59 “small project” (less than 50 kilowatts (“kW”)) contracts, for a total of 778 kW in one of four quarterly auctions.<sup>21</sup>

The inherent flaw in the design of FirstEnergy’s residential REC purchase program is the re-setting of REC purchase prices on an annual basis.<sup>22</sup> This defect, and not the “economic times” is the primary reason that its residential customers have struggled to secure financing for renewable energy systems. Forcing customers to accept a “floating” REC price determined anew every year, does nothing to alleviate the uncertainty accompanying short-term contracts and has made residential renewable energy systems essentially un-financeable under the program. That is to say, a “long-term contract” for purchases in which future prices are totally unspecified does not constitute a long-term contract at all.

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<sup>19</sup> First Application at ¶9.

<sup>20</sup> Revised Application at 13. Information on FirstEnergy’s residential REC purchase program is available at [http://www.firstenergycorp.com/Residential\\_and\\_Business/Products\\_and\\_Services/Ohio\\_Residential\\_Rec/index.html](http://www.firstenergycorp.com/Residential_and_Business/Products_and_Services/Ohio_Residential_Rec/index.html). A copy of a REC purchase agreement offered through the program is attached hereto as Ex. 2.

<sup>21</sup> See <http://www.njedcsolar.com/announcements.cfm?announcementId=70>.

<sup>22</sup> Ex. 2 at ¶5.

### **C. Long Term Contracts Are The Solution**

FirstEnergy notes that it “considered entering into long-term contracts” but could not negotiate a contract that would provide SRECs for the 2010 calendar year.<sup>23</sup> “Considering,” without executing or offering, a long term contract does not meet the statutory test.

FirstEnergy is well-versed in the formation of long-term contracts to procure SRECs. It has entered into those contracts in Pennsylvania, a state with similar economic, geographic and technical circumstances as Ohio, but wherein FirstEnergy has been able to fully comply with RPS purchase requirements amounting to several orders of magnitude larger than its purchase requirements in Ohio. In fact, in a separate application before this Commission, it is seeking approval of an RFP to purchase SRECs through ten-year contracts as part of its standard service offer (“SSO”).<sup>24</sup> In this case, FirstEnergy notes that if its RFP application “is approved by the Commission and the RFP is successful,” such Ohio SRECs “will be used towards meeting future compliance requirements.”<sup>25</sup>

It is also worth noting that FirstEnergy Solutions recently announced that it entered into a long-term (twenty-year) power purchase agreement (“PPA”) with a wind developer to buy 100 megawatts (“MW”) of wind power being developed in western Ohio.<sup>26</sup> The FirstEnergy Solutions deal follows on the heels of American Electric Power’s announcement that it signed a twenty-year PPA with a wind developer for all of the output of a 99 MW wind farm in Paulding County, Ohio.<sup>27</sup> Similarly, AEP entered into a twenty-year PPA for solar power in Wyandot County, which enabled the 10 MW project there to be financed, constructed, and now placed in service. These recent Ohio developments provide concrete, real-world evidence of the positive

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<sup>23</sup> Revised Application at 10.

<sup>24</sup> See Case No. 10-2891-EL-ACP, Application (December 2, 2010).

<sup>25</sup> Revised Application at 10.

<sup>26</sup> See Press Release at <http://investors.firstenergycorp.com/phoenix.zhtml?c=102230&p=irol-newsArticle&ID=1526625&highlight=>.

<sup>27</sup> See Press Release at <https://www.aepohio.com/info/news/viewRelease.aspx?releaseID=951>.

impact of long-term contracts on the Ohio renewable marketplace and show how the state's advanced energy policy, properly implemented, is achieving its objective.

That FirstEnergy is now pursuing long-term contracts to meet future compliance requirements is no basis for a waiver of its 2009 and 2010 SER benchmarks. SB 221 explicitly considers the pursuit of long-term contracts a critical factor in the determination of whether a utility should receive a *force majeure* determination waiving its renewable benchmarks. In this case, FirstEnergy did not seriously pursue long-term contracts for SRECs in 2009 and 2010, and therefore did not put forth a good-faith effort to comply with SB 221. The Commission should not grant its application for a *force majeure* waiver.

#### **IV. REMEDY**

As demonstrated above, FirstEnergy's self-styled "aggressive" compliance strategy had little chance of producing the necessary SRECs and does not meet the statutory requirement of seeking long-term contracts to comply with SB 221.

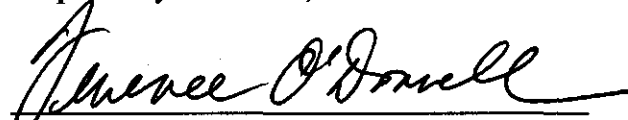
The Solar Alliance requests the Commission to exercise its statutory authority under R.C. 4968.64(C)(4)(a) to require FirstEnergy to solicit long-term, financeable SREC contracts to meet its 2010 Ohio Solar Benchmark. If the terms of the solicitation comply with SB 221 and are consistent with the basic mechanics of solar finance, as addressed in the current FirstEnergy RFP request, FirstEnergy would receive multiple competitive responses. We propose that the term for the RFP be a minimum of ten years. The proposed RFP in FirstEnergy's SSO case can serve as a template. The RFPs should be separately issued, giving the industry additional opportunities to provide the requisite SRECs and increasing the likelihood of FirstEnergy's compliance. Under the terms of the RFP we are seeking in this case, the Commission should expressly require that the first SRECs purchased under the RFP be used to retire the Company's remaining 2010 obligations.

Alternatively, the Commission should require FirstEnergy to pay the renewable energy compliance payment as required by statute, in the amount of \$630,800. However, if the Commission is inclined to grant the waiver, it should follow its own precedent and defer the Company's 2010 shortfalls as a supplement to its existing 2011 solar mandate.

#### V. CONCLUSION

For the reasons above, the Solar Alliance respectfully asks the Commission to require FirstEnergy to issue long-term RFPs for SRECs or impose the Alternative Compliance Payment of \$630,800. This ruling would send the signal that Ohio is committed to building a robust solar marketplace consistent with the legislature's intent in SB 221. In the alternative, the Solar Alliance requests the Commission to condition a waiver on FirstEnergy's recovering the 2010 shortfall in 2011.

Respectfully submitted,

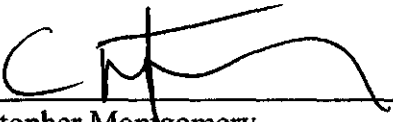


Terrence O'Donnell  
Christopher Montgomery  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, Ohio 43215  
Telephone: (614) 227-2345; 227-4885  
Facsimile: (614) 227-2390  
E-mail: [todonnell@bricker.com](mailto:todonnell@bricker.com)  
[cmontgomery@bricker.com](mailto:cmontgomery@bricker.com)

Attorneys for The Solar Alliance

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene, Memorandum in Support and Comments of the Solar Alliance was served upon the parties of record listed below this 2nd day of June 2011 *via* regular mail.

  
\_\_\_\_\_  
Christopher Montgomery

Harvey Wagner  
Cleveland Electric Illuminating Co.  
Ohio Edison Co.  
Toledo Edison Co.  
76 South Main Street  
Akron, OH 44308

Michael Lavanga  
Nucor Steel Marion, Inc.  
1025 Thomas Jefferson Street, N.W.  
8<sup>th</sup> Floor, West Tower  
Washington, D.C. 20007

Carrie Dunn  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308

Tara Santarelli  
Environmental Law & Policy Center  
1207 Grandview Ave., Ste. 201  
Columbus, OH 43212

David Boehm  
Michael Kurtz  
Ohio Energy Group  
36 East Seventh Street, Ste. 1510  
Cincinnati, OH 45202



Bricker & Eckler  
ATTORNEYS AT LAW

# Ohio Senate Bill 221 Alternative Energy Portfolio Standard

Renewable ORC 4928.01(A)(35) • Solar – Photovoltaic • Solar – Thermal • Wind • Hydropower • Certain Solid Waste • Biomass • Bio-Methane Gas • Fuel Cells • Wind Turbines – Lake Erie • Off Peak Storage Facilities Utilizing Renewables • Distributed Generation Facilities Utilizing Renewables	Renewable and Solar Benchmarks: 12.5% + ORC 4928.64(B)(2) <table><tr><th>Y</th><th>R</th><th>S</th></tr><tr><td>2009:</td><td>25%</td><td>.004%</td></tr><tr><td>2010:</td><td>50%</td><td>.010%</td></tr><tr><td>2011:</td><td>1.0%</td><td>.030%</td></tr><tr><td>2012:</td><td>1.5%</td><td>.060%</td></tr><tr><td>2013:</td><td>2.0%</td><td>.090%</td></tr><tr><td>2014:</td><td>2.5%</td><td>.120%</td></tr><tr><td>2015:</td><td>3.5%</td><td>.150%</td></tr><tr><td>2016:</td><td>4.5%</td><td>.180%</td></tr><tr><td>2017:</td><td>5.5%</td><td>.220%</td></tr><tr><td>2018:</td><td>6.5%</td><td>.260%</td></tr><tr><td>2019:</td><td>7.5%</td><td>.300%</td></tr><tr><td>2020:</td><td>8.5%</td><td>.340%</td></tr><tr><td>2021:</td><td>9.5%</td><td>.380%</td></tr><tr><td>2022:</td><td>10.5%</td><td>.420%</td></tr><tr><td>2023:</td><td>11.5%</td><td>.460%</td></tr><tr><td>2024:</td><td>12.5%</td><td>.500%</td></tr></table>	Y	R	S	2009:	25%	.004%	2010:	50%	.010%	2011:	1.0%	.030%	2012:	1.5%	.060%	2013:	2.0%	.090%	2014:	2.5%	.120%	2015:	3.5%	.150%	2016:	4.5%	.180%	2017:	5.5%	.220%	2018:	6.5%	.260%	2019:	7.5%	.300%	2020:	8.5%	.340%	2021:	9.5%	.380%	2022:	10.5%	.420%	2023:	11.5%	.460%	2024:	12.5%	.500%	At least 1/2 of renewable energy resources to be implemented by the utilities shall be met through facilities located in Ohio.  The remainder shall be met with resources that can be shown to have been delivered into this state. ORC 4928.64(B)(3)	Utilities may use R.E.C.S in any of the 5 calendar years following acquisition to comply with both the renewable and solar energy resource requirements.  1 R.E.C. shall equal 1 Mw Hour of electricity from renewable resources. ORC 4928.65	1) Annual PUCO Review ORC 4928.64(C)(1) 2) If Not In Compliance: ORC 4928.64(C)(2) A) Solar Benchmark \$ per Mw hour 2009: \$450 2010: \$409 2012: \$350 2014: \$300 2016: \$250 2018: \$200 2020: \$150 2022: \$100 2024: \$50 B) Renewable Benchmark 2009: \$45 Adjusted annually per CPI
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Advanced ORC 4928.01(A)(34) • Clean Coal • Advanced Nuclear • Energy Efficiency • Fuel Cells • Co-gen • Certain Solid Waste • Mercantile Sited ORC 4928.01 (A)(1) • Real/Reactive Power • Waste Heat Efficiency • Demand/Load storage • Advanced/Renewable	Advanced Energy Requirement: 12.5% ORC 4928.64(B)(1) 3% Cost Cap Utilities not required to comply with benchmark to the extent compliance will result in a 3% increase in electricity production or acquisition costs. ORC 4928.64(C)(3)	Force Majeure Provision Utility may request PUCO to determine whether renewable resources are sufficiently available to enforce R.P.S. benchmark requirement. If utility shows good faith effort to comply with renewable benchmarks but cannot, PUCO may reduce obligation. Modification does not automatically reduce future benchmarks. ORC 4928.64(C)(4)																																																					

## Key A.E.P.S. Cost Containment Mechanisms

3% Cost Cap	Force Majeure Provision
Utilities not required to comply with benchmark to the extent compliance will result in a 3% increase in electricity production or acquisition costs. ORC 4928.64(C)(3)	Utility may request PUCO to determine whether renewable resources are sufficiently available to enforce R.P.S. benchmark requirement. If utility shows good faith effort to comply with renewable benchmarks but cannot, PUCO may reduce obligation. Modification does not automatically reduce future benchmarks. ORC 4928.64(C)(4)

For more information contact:

Terrence O'Donnell 614.227.2345

Kurt Tunnell 614.227.8837

Brett Breitschwerdt 614.227.2301

[todonnell@bricker.com](mailto:todonnell@bricker.com)

[ktunnell@bricker.com](mailto:ktunnell@bricker.com)

[bbreitschwerdt@bricker.com](mailto:bbreitschwerdt@bricker.com)

**Second Amended Residential Renewable Energy Credit Purchase Program Agreement**

**THIS SECOND AMENDED RESIDENTIAL RENEWABLE ENERGY CREDIT PURCHASE PROGRAM AGREEMENT ("Agreement")** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, hereinafter called the "Company," and \_\_\_\_\_, hereinafter called the "Customer," (collectively the "Parties" or individually the "Party"), and is effective as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date").

**WITNESSETH**

**WHEREAS**, the Company is an electric distribution utility and electric light company, as defined in R.C. § 4928.01(A); and

**WHEREAS**, Customer is a residential customer, currently taking electric service at its residence under the Company's Residential Service Rate in the Company's Schedule of Rates for Electric Service Tariff; and

**WHEREAS**, R.C. § 4928.64 requires the Company to meet certain alternative energy resource benchmarks and such compliance may include the use of Renewable Energy Credits ("RECs"); and

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

**1. Residential Customer:** Customer represents and warrants that Customer is a residential customer of Company, and that Customer owns or leases a customer-sited renewable energy project in the State of Ohio that has been certified and approved by the Public Utilities Commission of Ohio (the "Project"). Customer further represents and warrants that Customer has signed and completed the Company's Interconnection documents and currently participates or will participate upon execution of this document in the Company's Net Energy Metering Rider.

**2. Fully Aggregated REC(s):** Customer expects its Project will generate one or more REC(s), on an annual basis, and understands that fully aggregated environmental attributes associated with one megawatt hour of electricity derived from Customer's Project is equivalent to one (1) REC. Customer shall be responsible for tracking and recording renewable energy that amounts to less than one (1) megawatt hour. Such renewable energy shall not be counted as one (1) REC, until such time it amounts to one (1) megawatt hour of electricity derived from Customer's Project.

**3. Project Criteria:** Customer acknowledges and agrees that:

The Project shall meet the following criteria:

- i. Project must have a placed-in-service date of January 1, 1998, or after, and meet the definition of "Renewable Energy Resource" as defined in R.C. § 4928.01(A); and
- ii. Project must be able to generate at least one (1) megawatt hour annually on the Company's energy delivery system.
- iii. Project must have a meter that meets the standard set forth in Ohio Administrative Code 4901:1-10 provided by the customer, at its own cost and expense, on the output of the inverter if applicable, where kilowatt hours consistent solely from the Project's generation can be measured and verified. This requirement is waived if the existing utility meter has the incremental functionality described above to measure and verify the kilowatt hour output of the Customer Project.
- iv. Project must be attached as a permanent fixture at the Customer's property (service address) during the term of the contract.
- v. Renewable energy delivered from a renewable energy resource project shall be calculated by reading the output of the meter at two different points of the year (i.e. January 1 to December 31). Customer must provide documentation evidencing the initial meter reading. An illustrative calculation of this value is as follows:

Output metering reading on January 1, 2009 is 1520 kwhs

Output metering reading on December 31, 2009 is 5433 kwhs

$$5433 - 1520 = 3913 \text{ kwhs or } 3.9 \text{ MWhs}$$

3.9 MWhs = 3 RECs (Note: The remainder 0.9 MWhs will carry over into the following year. However, no carryover shall exceed the term of this Agreement)

**4. Quantity:** Unless this Agreement is otherwise terminated, Company shall pay for the actual whole REC(s) generated by Customer's Project during the Initial Payable Period, and as applicable, each Subsequent Payable Period. The "Initial Payable Period" means the period from July 31, 2008 through December 31, 2009. The "Subsequent Payable Period" means each such calendar period from January 1<sup>st</sup> through December 31<sup>st</sup>. All reasonable costs associated with the administration of this Agreement and the purchase of REC(s) shall be recovered through the Companies' Rider AER.

**5. Purchase Price:** Company hereby agrees to purchase RECs on or before December 31<sup>st</sup> of each year at an amount ("Payment Amount") to be determined on the last day of the applicable Initial Payable Period ("Initial Payment Date") or Subsequent Payable Period ("Subsequent Payment Date"). The Payment Amount for residential Ohio solar RECs will be based on the weighted average price (based on the REC price bid for the applicable calendar year) the Companies paid for the product Ohio solar RECs through the Renewable Request for Proposal ("RFP") which produced a bid(s) for Ohio solar and was held most recent to the applicable Initial Payment Date or Subsequent Payment Date. The Payment Amount for residential Ohio non-solar RECs will be based on the weighted average price (based on the REC



price bid for the applicable calendar year) the Companies paid for the product Ohio non-solar REC(s) through the RFP which produced a bid(s) for Ohio non-solar REC(s) and was held most recent to the applicable Initial Payment Date or Subsequent Payment Date. In the event that the Companies have not purchased a single REC for the product Ohio solar and/or the product Ohio non-solar REC(s) through a RFP, the Payment Amount shall be the Alternative Payment set forth for the applicable year in Attachment B. Notwithstanding, the Companies will issue an RFP in each of 2009 (4<sup>th</sup> quarter), 2010, and 2011 to the extent that the Companies need additional REC(s) to meet their statutory benchmarks for the period of the Companies' Stipulation.

**6. Term:** This Agreement shall be for a fifteen (15) year term commencing on the effective date of this Agreement. Notwithstanding the foregoing, the residential renewable energy credit program shall not be offered to new customers after May 31, 2011, nor shall an Agreement bear an Effective Date after May 31, 2011.

**7. Credit:** Customer understands and agrees that Customer must remain in good financial standing with the Company and not become delinquent on any accounts with the Company. Delinquent is defined as having service terminated for nonpayment.

**8. Creation of REC(s):** Company will rely upon and, shall use information supplied by Customer to create solar and wind REC(s) in PJM Environmental Information Services, Inc.'s Generation Attribute Tracking System ("PJM's GATS"). Company shall require and shall only accept any and all other renewable energy resource (i.e. other than solar and wind) REC(s) that Customer has created in either PJM's GATS or MISO Midwest Renewable Energy Tracking System ("M-RETS"). Customer shall also complete the certification documents on file with the Public Utilities Commission of Ohio and the Affidavit of Performance, attached hereto as Exhibit A.

**9. Inspection and Audit:** Company has the right, upon seventy-two (72) hours prior notice, to inspect and audit performance of the Project. Company will provide Customer written documentation as a result of the inspection and audit. Notwithstanding the foregoing, it shall be the sole responsibility of Customer to operate, maintain, repair, and inspect the Project to ensure its proper working order.

**10. Payment (Solar/Wind):** Customer hereby agrees to submit an Affidavit of Performance, at the end of Initial Payable Period, and as applicable each Subsequent Payable Period as defined in Article 5 of this Agreement, attesting to the current condition of the Project and the number of REC(s) the Project delivered. Company shall register whole solar and wind REC(s) with PJM's GATS, and then issue to Customer a payment within 60 business days equal to the number of whole REC(s) generated multiplied by the purchase price.

**11. Payment (Non-solar/Non-wind):** Customer shall create and maintain a PJM's GATS account and/or M-RETS account to facilitate the transfer of REC(s) which are neither solar or wind to the Company's PJM's GATS account. Company shall issue payment within 60 business days to Customer for non-solar or non-wind whole REC(s) once such REC(s) are received and accepted in the Company's PJM's GATS account.

**12. Termination:** Customer may terminate this Agreement at any time, by giving the Company sixty days' written notice. This Agreement shall immediately terminate upon the following occurrences: (i) Project ceases to be a permanent fixture on Customer owned property; (ii) Project materially fails to function in such a manner as to produce renewable energy megawatt hours for a payable period; (iii) Commission revokes the Project's certification; (iv) Commission disallows cost recovery for any REC(s) that were properly registered in PJM's GATS or M-RETS which the Company purchased in connection with this Agreement, and would otherwise qualify to meet the Company's statutory requirements and applicable Commission rules and regulations; or (v) the expiration of this Agreement.

**13. Limitation of Liability and Indemnification:** Customer shall assume all liability for and shall indemnify Company for any claims, losses, and reasonable costs and expenses of any kind or character, other than the costs of defending an action or claim made by a third person, to the extent that they result from Customer's negligence in connection with the design, construction or operation of the Customer's Project. In no event shall Customer be liable for consequential, special, incidental or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of production. The Customer does not assume liability for any costs for damages arising from the disruption of the business of the Company or for the Company's costs and expenses of prosecuting or defending an action or claim against the Customer. This paragraph does not create a liability on the part of the Customer to the Company or a third person, but requires indemnification where such liability exists. Notwithstanding the foregoing, Customer shall reimburse the Company for any regulatory penalties assessed against the Company for non-compliance with alternative energy benchmarks due to the negligence of the Customer.

**14. Notices:** Unless otherwise stated herein, all notices, demands, or requests required or permitted under this Agreement must be in writing and must be delivered or sent by overnight express mail, courier service, electronic mail, or facsimile transmission addressed as follows:

If to the Customer:

[Customer Name]  
[Address]  
[Telephone]

If to the Company:

FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
Attn: Dana J Parshall, Director, Energy  
Efficiency Program Development  
Telephone: 330-761-4491  
Fax: 234-678-2140  
Email: [energyefficiencyrec@firstenergycorp.com](mailto:energyefficiencyrec@firstenergycorp.com)

or to such other person at such other address as a Party may designate by like notice to the other Party. Notice received after the close of the business day will be deemed received on the next business day; provided that notice by facsimile transmission will be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

**15. Entire Agreement:** This Agreement contains the Parties' entire understanding with respect to the matters addressed herein and there are no verbal or collateral representations, undertakings, or agreements not expressly set forth herein. No change in, addition to, or waiver of the terms of this Agreement shall be binding upon any of the Parties unless the same is set forth in writing and signed by an authorized representative of each of the Parties.

**16. Assignment:** Customer may not assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the Company, which consent shall not be unreasonably withheld. No assignment of this Agreement will relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained.

**17. Acceptance:** The parties hereby acknowledge their acceptance of the terms of this Agreement by signing below:

\_\_\_\_\_  
Customer Name (Print)

\_\_\_\_\_  
Company Representative (Print)

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Company Representative (Signature)

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Address Line 2

\_\_\_\_\_  
Address Line 2

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Phone Number

**FORM OF AFFIDAVIT**

State of OHIO :

\_\_\_\_\_  
(Town) ss.

County of \_\_\_\_\_ :

\_\_\_\_\_, Affiant, being duly sworn/affirmed according to law, deposes and says that:

1. I am the duly authorized representative of [the Project].
2. I have personally examined and am familiar with all information contained in the foregoing Statement, including any exhibits and attachments, and that based upon my inquiry of those persons immediately responsible for obtaining the information contained in the Statement, I believe that the information is true, accurate and complete.
3. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

The Statement:

As of \_\_\_\_\_, \_\_\_\_\_ continued to be in  
(Date) (Project)

good working order with no material corrective actions pertaining to safety and/or operation warranting attention. Further, [the Project] delivered [Quantity of REC(s)] and I now assign those RECs to the Company.

**Meter Read Date**

\_\_\_\_\_ Start: \_\_\_\_\_

End: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_ Month/Year

\_\_\_\_\_  
Signature of Affiant & Title

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Print Name and Title

**Attachment B****Alternative Payment:**

<b>Year</b>	<b>Solar</b>	<b>Non-Solar</b>
2009	\$360	\$36
2010	\$320	\$36
2011	\$320	\$36
2012	\$280	\$36
2013	\$280	\$36
2014	\$240	\$36
2015	\$240	\$36
2016	\$200	\$36
2017	\$200	\$36
2018	\$160	\$36
2019	\$160	\$36
2020	\$120	\$36
2021	\$120	\$36
2022	\$80	\$36
2023	\$80	\$36
2024	\$50	\$36
2025	\$50	\$36
2026	\$50	\$36