

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Alternative Energy :
Resources Report for Calendar Year 2010 : Case No. 11-2650-EL-ACP
From SMART Papers Holdings, LLC. :

INITIAL COMMENTS
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

On April 25, 2011, SMART Papers Holdings LLC (SMART Papers) filed its Alternative Energy Resources Portfolio Status Report for Calendar Year 2010. SMART Papers included a *force majeure* request in this filing, citing an inability to obtain the 50 renewable energy credits (RECs) and 1 solar renewable energy credit (S-REC) that it indicates is needed to satisfy its 2010 compliance obligation.

On May 5, 2011, the attorney examiner in this case established a deadline for the submittal of comments and reply comments. This schedule was subsequently revised,¹ to include the following deadlines:

- Initial comments filed by June 15, 2011
- Reply comments filed by June 29, 2011

Staff files these comments in accord with the revised schedule established in this proceeding.

¹ In re Smart Papers Holdings, Case No. 11-2659-EL-ACP (Entry) (May 26, 2011).

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A. Summary of SMART Papers' Filing

In its filing, SMART Papers asserts that it needed 50 RECs and 1 S-REC to satisfy its 2010 alternative energy portfolio standard obligations under Ohio Revised Code (ORC) Section 4928.64. The premise of SMART Papers argument is that its compliance obligation is so small that market participants were not inclined to entertain their purchase offers. In support of its position, SMART Papers indicated that it was “unable to generate or purchase the required RECs because of the extremely small size of its load and therefore the very small requirements of the standard.”² Further, SMART Papers argues that, despite working with an experienced energy agent, it has been unable to comply “through no fault of its own.”³ SMART Papers is seeking a *force majeure* determination or, in the alternative, it asks the Commission to determine and assess the appropriate alternative compliance payment.⁴

B. Staff Analysis, Conclusions, and Recommendations

In its filing, SMART Papers indicated a need for 50 RECs and one S-REC. Therefore, to achieve compliance with its 2010 obligations, SMART Papers requires (1) 50 RECs, of which at least 25 must originate from Ohio facilities, and (2) one S-REC which must originate from an Ohio facility.

² *In re Smart Papers Holdings*, Case No. 11-2650-EL-ACP (Application at 2) (April 25, 2011).

³ *Id.*

⁴ *Id.*

To assess SMART Papers' claims regarding the lack of readily available S-RECs, Staff began its analysis by reviewing the public bulletin board offered on PJM EIS Generation Attribute Tracking System (GATS)⁵ which enables interested sellers to post details on their available RECs and S-RECs. On the sellers' bulletin board, Staff observed nine S-RECs from PUCO-certified solar PV facilities located in Ohio, at least seven of which were vintage 2010. This data suggests that S-RECs are available, even in smaller volumes, that would have satisfied SMART Papers' 2010 solar requirement. Further, although SMART Papers argues that sellers are not interested in SMART Papers' limited S-REC needs, it is not clear from its filing that SMART Papers evaluated and/or pursued larger S-REC purchases that may have prompted greater response from sellers. S-RECs can be banked for future use,⁶ and the Commission's rule on *force majeure* requires that REC banking be pursued.⁷ Staff concludes that the need for a *force majeure* determination has not been adequately demonstrated for SMART Papers' 2010 solar obligation.

With respect to SMART Papers' non-solar obligation of 50 RECs, Staff notes that SMART Papers' has an electric generating facility that was certified as an eligible Ohio renewable energy resource generating facility by the Commission in Case No. 10-0254-EL-REN. This facility, as proposed, would co-fire cellulosic pellets with coal. In Case 10-0254-EL-REN, SMART Papers projected annual renewable generation of between

⁵ See <http://www.pjm-eis.com/>.

⁶ Ohio Admin. Code § 4901:1-40-04(D)(3) (West 2011).

⁷ Ohio Admin. Code § 4901:1-40-06(A)(2) (West 2011).

50,000-100,000 MWHs.⁸ It is not clear from its filing in this *force majeure* proceeding why SMART Papers was unable to generate the required RECs at this certified renewable energy resource generating facility. Further, as part of a *force majeure* request, an entity must demonstrate that it pursued all reasonable compliance options, including, but not limited to, REC solicitations, REC banking, and long-term contracts.⁹ Although SMART Papers' filing indicates that it worked with an energy agent, the filing does not detail any specific actions undertaken by this agent. Staff therefore concludes that SMART Papers has not demonstrated that all reasonable compliance options were pursued.

In terms of quantifying an alternative compliance payment, it is essential to first determine the appropriate compliance obligation. The obligation for 2010 is a function of the statutory obligation multiplied by the applicable 2010 baseline, with the baseline computed as an average of SMART Papers' annual Ohio electricity sales for 2007, 2008, and 2009. According to SMART Papers' filing, it did not have Ohio electric sales during this time period. It did, however, have sales in 2010. According to Ohio Administrative Code (OAC) 4901:1-40-03(B)(2)(b), the baseline in such a scenario should consist of a reasonable projection of its retail electric sales in the state for a calendar year. SMART Papers has proposed a baseline of 10,045 megawatt-hours (MWHs).¹⁰ Staff finds this

⁸ *In re Smart Papers Holdings*, Case No. 10-254-EL-REN (Responses to Staff Interrogatories – Second Set) (October 18, 2010).

⁹ Ohio Admin. Code § 4901:1-40-06(A)(1) (West 2011).

¹⁰ *In re Smart Papers Holdings*, Case No. 11-2650-EL-ACP (Application at 2) (April 25, 2011)

baseline to be reasonable.¹¹ The statutory benchmark for 2010¹² is 0.50% including a specific solar requirement of 0.01%. Applying these numbers produces the following results:

- Solar Requirement: $10,045 \text{ MWHs} * 0.01\% = 1.0045 \text{ MWHs}$
- Non-Solar¹³ Requirement: $10,045 * 0.49\% = 49.2205 \text{ MWHs}$

The Ohio Administrative Code¹⁴ requires that, in the event of an alternative compliance payment being applied, the entity shall "...remit a compliance payment based on the amount of noncompliance rounded up to the next megawatt hour (MWh)...." Therefore, in the event that the Commission requires payment of the alternative compliance payment by SMART Papers, such obligation should be rounded to 50 RECs and 2 S-RECs.

¹¹ Corresponds to data in SMART Papers' April 6, 2011 annual report filed in Case No. 11-0003-GE-RPT.

¹² Ohio Rev. Code Ann. § 4928.64(B)(2) (West 2011).

¹³ Staff uses "non-solar" in this context to refer to the total renewable requirement net of the specific solar requirement. Staff acknowledges that there is not a specific "non-solar" requirement in the applicable statute.

¹⁴ Ohio Admin. Code § 4901:1-40-08(A) (West 2011).

The solar alternative compliance payment (ACP) for 2010 was \$400/MWH,¹⁵ while the non-solar ACP was set at \$45/MWH.¹⁶ Applying these ACPs to SMART Papers' 2010 compliance shortfall results in a total payment due of \$3,050.¹⁷

If the Commission assesses the alternative compliance payments, the Staff also recommends the following:

(1) The payment should be directed to the PUCO's Fiscal Department, and made out to "Treasurer State of Ohio." A letter should also be attached to the check stating that it is a compliance payment required by Ohio Revised Code Section 4928.64 for deposit to the credit of the Advanced Energy Fund, under the control of the Ohio Department of Development and created under Section 4928.61 of the Revised Code. The letter should state the number of the Commission case in which the payment is being ordered.

¹⁵ Ohio Rev. Code Ann. § 4928.64(C)(2)(a) (West 2011).

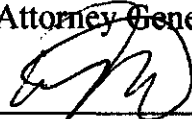
¹⁶ *In the Matter of the Annual Adjustment of the Non-Solar Alternative compliance Payment Pursuant to Section 4928.64.(C)(2)(b), Revised Code*, Case No. 10-469-EL-ACP.

¹⁷ $\$3,050 = ((50 \text{ MWHs} * \$45/\text{MWH}) + (2 \text{ MWHs} * \$400/\text{MWH})).$

(2) SMART Papers should submit an attestation in this docket consistent with the requirements in 4901:1-40-08(D), Ohio Administrative Code.

Respectfully submitted,

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Ohio Attorney General



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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Initial Comments** submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 15th day of June, 2011.



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