

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Alternative)
Energy Status Report of Ohio Edison)
Company, The Cleveland Electric)
Illuminating Company and the Toledo Edison) Case No. 11-2479-EL-ACP
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).)

**COMMENTS IN OPPOSITION TO FIRSTENERGY’S APPLICATION FOR A FORCE
MAJEURE DETERMINATION
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL
AND
CITIZEN POWER**

I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”) and Citizen Power provide Comments in this case in which the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively “FirstEnergy” or “Companies”) request that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) approve their application for a force majeure determination. Such a determination would excuse FirstEnergy from meeting the full solar energy resources (“SER”) benchmark requirements for 2010.¹

The Commission should reject the Companies’ request.

¹ R.C. 4928.64(C)(4)(a).

II. ARGUMENT

A number of parties² previously commented that FirstEnergy's strategy to comply with its collective SER benchmark would not be successful in 2010.³ In opposition to FirstEnergy's 2009 force majeure application, these parties stated that FirstEnergy should enter into long-term commitments with potential solar developers.⁴ Further, these parties stated that potential investors in solar facilities would need the certainty of a consistent, future revenue stream to finance the construction of solar facilities.⁵ Without these facilities, FirstEnergy was unlikely to meet its 2010 solar benchmark requirement.

On June 27, 2011, the Environmental Law and Policy Center ("ELPC") submitted comments that urged the Commission to reject the Companies' force majeure request. Ohio law provides that in the absence of the PUCO finding that there is a force majeure condition, non-compliance with the applicable statutory benchmark will result in requiring an alternative compliance payment.⁶ The ELPC seeks the assessment of a 2010 alternative compliance payment⁷ that exceeds \$600,000, and an additional penalty in excess of \$800,000 due to FirstEnergy's breach of a Commission-approved, conditional 2009 SER benchmark waiver.⁸ The undersigned parties support this recommendation for penalties totaling approximately \$1.5 for non-compliance with solar benchmark requirements.⁹

² The parties were the OCC, OEC, ELPC, Solar Alliance, Citizen Power, and the Vote Solar Initiative.

³ *In re FirstEnergy Request for Approval of a Force Majeure Determination for 2009 Solar Energy Resources*, Case No. 09-1922-EL-ACP, OCEA Comments at 9 (March 9, 2010).

⁴ *Id.* at 15-16.

⁵ *Id.* at 9.

⁶ R.C. 4928.64(C)(2).

⁷ R.C. 4928.64(C)(2)(a).

⁸ Comments by ELPC and OEC at 3 (June 27, 2011).

⁹ R.C. 4928.64(C)(2)(a).

III. CONCLUSION

Parties previously alerted the Commission and FirstEnergy itself that the Companies' practices for SER compliance required changes. FirstEnergy did not alter its compliance strategy and seeks a second waiver. The Commission should not reward FirstEnergy with a second waiver. Instead, penalties should be assessed, as provided under law, for FirstEnergy's failure to meet the statutory requirements for use of solar energy.

Respectfully Submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Jeffrey L. Small

Jeffrey L. Small, Counsel of Record
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
small@occ.state.oh.us

/s/ Theodore Robinson

Theodore Robinson
Staff Attorney and Counsel
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
Telephone: (412) 421-7029
robinson@citizenpower.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Comments has been served upon the following parties by first class mail, postage prepaid, this 27th day of June, 2011.

/s/ Jeffrey L. Small
Jeffrey L. Small
Assistant Consumers' Counsel

SERVICE LIST

Kathy J. Kolich
Carrie M. Dunn
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
kjkolich@firstenergycorp.com
cdunn@firstenergycorp.com

Thomas McNamee
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
Thomas.mcnamee@puc.state.oh.us

Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street N.W.
West Tower, 8th Floor
Washington, D.C. 20007
mkl@bbrslaw.com

Lisa G. McAlister
Matthew W. Warnock
100 South Third Street
Columbus, Ohio 43215
lmcalister@bricker.com
mwarnock@bricker.com

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212
tsantarelli@elpc.org

Christopher Montgomery
Terrence O'Donnell
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
todonnell@bricker.com
cmontgomery@bricker.com

David F. Boehm
Michael L. Kurtz
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
m Kurtz@BKLawfirm.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/27/2011 3:58:36 PM

in

Case No(s). 11-2479-EL-ACP

Summary: Comments Comments in Opposition to FirstEnergy's Application for a Force Majeure Determination by the Office of the Ohio Consumers' Counsel and Citizen Power electronically filed by Patti Mallarnee on behalf of Small, Jeffrey L Mr.