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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio :
Edison Company, The Cleveland Electric :
Illuminating Company and The Toledo : Case No. 11-2479-EL-ACP
Edison Company for a *Force Majeure* :
Determination for Their In-State Solar :
Resources Benchmark Pursuant to R.C. :
Section 4928.64(C)(4)(a). :

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

Michael DeWine
Ohio Attorney General

William. L. Wright
Section Chief

Thomas W. McNamee
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
614.466.4396 (telephone)
614.644.8764 (fax)
thomas.mcnamee@puc.state.oh.us

July 11, 2011

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On April 15, 2011, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) filed a request seeking a force majeure determination for a portion of their 2010 in-state solar resources requirement under Section 4928.64, Ohio Revised Code.

On May 6, 2011, the attorney examiner in this case established a procedural schedule that was subsequently modified¹ to include the following schedule for the submittal of comments and reply comments:

- Initial comments filed by June 27, 2011;
- Reply comments filed by July 11, 2011.

¹ *In re FirstEnergy*, Case No. 11-2479-EL-ACP (Entry) (May 26, 2011).

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

I. Parties' Initial Comments

Consistent with the Attorney Examiner's procedural schedule for this proceeding, initial comments were submitted on June 27, 2011, by the Environmental Law and Policy Center (ELPC) and jointly by Citizen Power and the Office of the Ohio Consumers' Counsel (OCC). PUCO Staff also submitted initial comments.

II. Staff Reply Comments

In its Reply Comments, Staff is addressing several items raised in the initial comments of ELPC, Citizen Power, and the OCC.

A. Imposition of the Alternative Compliance Payment (ACP)

In its initial comments, ELPC proposed an imposition upon the Companies of a penalty of approximately \$1.5 million due to their compliance shortfall.² The initial joint comments of OCC and Citizen Power supported the ELPC recommendation.³

In these reply comments Staff is not addressing the recommended imposition of the penalty, nor the calculations underlying the proposed penalty. Rather, Staff believes

² *In re FirstEnergy*, Case No. 11-2479-EL-ACP (Comments in Opposition to FirstEnergy's Application for a *Force Majeure* Determination submitted on behalf of the Environmental Law & Policy Center at 3) (June 27, 2011).

³ *Id.* (Comments in Opposition to FirstEnergy's Application for a *Force Majeure* Determination submitted on behalf of the Office of the Ohio Consumers' Counsel and Citizen Power at 2) (June 27, 2011).

that the scope of this specific request is limited to the request for a *force majeure* determination. If such request is denied by the Commission, and if the imposition of an ACP is appropriate, Staff believes that any such discussion should occur in the context of the Companies' 2010 annual compliance status report review.

B. Residential Renewable Energy Credit (REC) Program

ELPC addressed the Companies' residential REC program in its initial comments, criticizing the design of the program and the Companies' decision to allow the program to expire. ELPC also argued that allowing the program to expire conflicts with the Second Supplemental Stipulation in Case No. 10-388-EL-SSO.

Staff notes for clarity that the Companies' residential REC program, as approved in Case No. 09-551-EL-UNC, was designed to cease enrolling new participants at the end of May 2011. However, customers enrolled prior to the program's expiration continue to participate for a 15 year term.⁴ The reference in the Second Supplemental Stipulation to which ELPC points was not intended to require a continuation of the Companies' residential REC program, but rather was an acknowledgement that delivery of RECs and solar RECs (S-RECs) under the program would continue for a 15 year term.

⁴

In re FirstEnergy, Case No. 09-551-EL-UNC (Finding and Order at 2) (September 23, 2009).

C. The Use of S-RECs Obtained in 2011

The Companies indicated in their filing that they obtained eleven Ohio S-RECs in 2011 that they intend to apply towards their 2010 Ohio solar obligation.⁵ In its initial comments,⁶ ELPC contested the use of these eleven S-RECs arguing that they should instead be applied to the Companies' 2011 benchmark.

Staff is not aware of a statute or rule that specifically addresses the timing issue that is raised here. Recognizing that there may be a lag associated with reporting generation data and the actual creation of the REC or S-REC, Staff acknowledges that some settlement period may be appropriate. Staff supports the idea of a one quarter (3 month) settlement period in which entities can secure RECs or S-RECs for their accounts. Staff's research also indicates that a settlement period is not uncommon in other states. Therefore, Staff advocates a general policy in which companies have until the end of March to settle their compliance accounts for the previous calendar year. This affords additional time after the end of the compliance year to complete transactions, and such account adjustments could still be incorporated within the April 15th annual compliance status report filings. Staff notes, however, that its proposed three month settlement period would not include RECs or S-RECs for which the associated electricity was generated during that three month period. If the electricity was generated during the settlement period (*i.e.*, January – March 2011), the associated RECs or S-RECs should then be

⁵ *In re FirstEnergy*, Case No. 11-2479-EL-ACP (Application at 8) (April 15, 2011).

⁶ *Id.* (Comments in Opposition to FirstEnergy's Application for a *Force Majeure* Determination submitted on behalf of the Environmental Law & Policy Center at 3) (June 27, 2011).

eligible for use toward future compliance obligations (*i.e.*, 2011) rather than for past obligations (*i.e.*, 2010).

For the specific eleven S-RECs obtained by the Companies in 2011, it is not clear from the Companies' filing when the associated electricity was generated. If generated during 2010, Staff would be not be opposed to including those particular S-RECs towards the Companies' 2010 obligation. On the other hand, if the underlying electricity was generated in 2011, then Staff believes these eleven S-RECs should be applied to a future obligation.

Respectfully submitted,


Michael DeWine
Ohio Attorney General



Thomas W. McNamee
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
614.466.4396 (telephone)
614.644.8764 (fax)
thomas.mcnamee@puc.state.oh.us

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply 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 11th day of July, 2011.



Thomas W. McNamee
Assistant Attorney General

Parties of Record:

Christopher J. Allwein
Jeffrey Small
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
allwein@occ.state.oh.us
small@occ.state.oh.us

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler
100 South Third Street
Columbus, OH 43215
lmcalister@bricker.com
mwarnock@bricker.com

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

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

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

Theodore Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.com

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

David F. Boehm
Michael L. Kurtz
Boehm Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@bkllafirm.com
mkurtz@bkllawfirm.com