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 Edison Company for Approval of Request for Proposal to Purchase Renewable Energy Credits Through Ten-Year Contracts.	)))))))	Case No. 10-2891-EL-ACP

ENTRY ON REHEARING

The Commission finds:

(1) The applicants, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the Companies), are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of the Commission.

(2) On December 2, 2010, the Companies filed an application for approval to conduct a request for proposal (RFP) to purchase renewable energy credits (RECs) through ten-year contracts pursuant to the Commission-approved combined stipulation in its most recent electric security plan proceeding, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order (August 25, 2010) (*2010 ESP Case*). More specifically, the Companies' application sought authorization to elicit competitive bids to purchase through ten-year contracts the annual delivery of 5,000 in-state solar renewable energy credits (SRECs) and 20,000 overall in-state RECs. Additionally, the application sought recovery of all reasonable costs associated with acquiring RECs through purchase and sale agreements, irrespective of the Companies' need for RECs to meet their statutory benchmark requirement, as well as recovery of such costs associated with administering the RFP.

(3) Intervention in the proceeding was granted to Nucor Steel Marion, Inc. (Nucor) and the Environmental Law and Policy Center (ELPC). Comments were filed by Nucor, ELPC, and Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., and Constellation Energy Projects and Services Group, Inc. (Constellation).

(4) On June 8, 2011, the Commission issued its Finding and Order (June 8 Finding and Order) finding that the application should be approved as modified by the Commission. Specifically, the Commission modified the application to allow bids to be unit-contingent, such that the REC supplier would be obligated to deliver a certain percentage of the output of a facility or deliver the total output of the facility up to the contracted amount.

(5) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

(6) On July 8, 2011, the Companies filed an application for rehearing regarding the Commission's June 8 Finding and Order. In their application for rehearing, the Companies argue that the June 8 Finding and Order is unlawful and unreasonable on three separate grounds. No memoranda contras were filed to the Companies' application for rehearing.

(7) In their first assignment of error, the Companies argue that the June 8 Finding and Order unreasonably and unlawfully modifies the Second Supplemental Stipulation in the *2010 ESP Case* by (a) requiring the use of a unit-contingent approach to acquire RECs and by (b) making delivery of RECs optional for suppliers until their facility is in service.

Specifically, the Companies take issue with the Commission's finding that "[i]n order to increase flexibility, Section 3.2 of the Purchase and Sale Agreement shall be modified to require the REC supplier to transfer a particular percentage of the output of the facility, or the total output of the facility, up to a contracted amount, rather than requiring quarterly transfer of RECs on a firm basis. For facilities that are not yet in service, REC suppliers may provide a defined quarterly number of

RECs for the period until the new facility's in service date and a percentage of the facility's output thereafter." June 8 Finding and Order at 10-11. The Companies argue that the Commission's modifications are inconsistent with the Second Supplemental Stipulation, which required the Companies to file a first application to "seek approval for the first RFP for the Companies to seek competitive bids to purchase through ten year contracts: 1) the annual delivery of 5,000 PUCO-certified solar RECs originating in Ohio, with a delivery period between June 1, 2011 and and [sic] December 31, 2020 and, 2) the annual delivery of 20,000 non-solar PUCO-certified RECs originating in Ohio, with a delivery period between June 1, 2011 and December 31, 2020." *2010 ESP Case*, Second Supplemental Stipulation (July 22, 2010) at 2. The Companies argue that this language of the Second Supplemental Stipulation requires the Companies to seek RFPs for a specified amount of RECs and does not permit or require the Companies to seek competitive bids for delivery of unit-contingent RECs or to allow for optional delivery for suppliers whose facilities are not yet in service. Consequently, the Companies contend that this directive in the June 8 Finding and Order is inconsistent with the *2010 ESP Case*, unlawful, and unreasonable.

(8) In their second assignment of error, the Companies argue that the June 8 Finding and Order is unreasonable and unlawful because it undermines the Companies' ability to achieve their statutory renewable energy resource benchmarks. Specifically, the Companies contend that, by requiring the delivery in the agreement to be unit-contingent and allowing for optional delivery of RECs by suppliers whose facilities are not yet in service, the Companies are at greater risk of noncompliance with their statutory benchmarks because they will be uncertain as to how many RECs they will receive.

(9) In their third assignment of error, the Companies argue that, alternately, if the Commission maintains its modifications, the Commission should order that the Companies may utilize all contracted unit-contingent and optional delivery RECs for purposes of the Companies' compliance with statutory benchmarks, regardless of whether the RECs were actually delivered by a REC supplier. Specifically, the Companies argue that this outcome would permit the unit contingent/optional delivery approach required by the June 8

Finding and Order, while protecting the Companies from the risks of noncompliance.

(10) In its comments filed on March 18, 2011, regarding the Companies' December 2, 2010, application, Constellation encouraged flexibility, recommending that the Commission alter "the Purchase and Sale Agreement to be unit-contingent, whereby the REC Supplier would be obligated to deliver a particular percentage of the output of the facility, or deliver the total output of the facility up to a contracted amount, in order to permit time for development of new facilities." Additionally, in its reply comments, Staff addressed Constellation's comments and expressed that Staff was "not opposed to efforts to ensure a reasonable degree of flexibility provided the overall outcome does not deviate from the terms of the Second Supplemental Stipulation in Case No. 10-388-EL-SSO" (Staff Comments at 2). FirstEnergy did not file reply comments or otherwise address Constellation's recommendation.

(11) Upon reviewing the Companies' argument regarding the Commission's modification of the Purchase and Sale Agreement to be unit-contingent and the modification's inconsistency with the Second Supplemental Stipulation in the *2010 ESP Case*, the Commission finds that the Companies' argument has merit. As the Companies argue, the Second Supplemental Stipulation as well as the Commission's Opinion and Order adopting the Second Supplemental Stipulation in 10-388 provide for an RFP to purchase 5,000 in-state SRECs and 20,000 in-state RECs over a certain period of time. Given this firm number, the Commission agrees that unit-contingent delivery is inconsistent with the Second Supplemental Stipulation. Further, as the Companies contend, Section 4928.64(B), Revised Code, requires the Companies to meet specific renewable energy resource benchmarks. The Commission agrees with the Companies that unit-contingent delivery and optional delivery of RECs by suppliers whose facilities are not yet in service would place the Companies at greater risk for noncompliance with their statutory benchmarks due to uncertainty over the amount of RECs that will actually be delivered.

Consequently, the Companies shall require quarterly transfer of RECs on a firm basis. Further, REC suppliers utilizing facilities that are not yet in service will not be permitted to provide a defined quarterly number of RECs for the period until the new facility's in service date and a percentage of the facility's output thereafter.

It is, therefore,

ORDERED, That the application for rehearing filed by the Companies be granted. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

MLW/sc

Entered in the Journal

AUG 0 3 2011

Betty McCauley
Secretary