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 Company.	)))))	Case No. 11-2479-EL-ACP

FINDING AND ORDER

The Commission finds:

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

(2) Section 4928.64(B), Revised Code, establishes benchmarks for electric utilities to acquire a portion of the electric utility's standard service offer from renewable energy resources. Specifically, the statute provides that, for 2010, a portion of the electric utility's electricity supply for its standard service offer must come from alternative energy sources (overall renewable energy resources benchmark), including 0.010 percent from solar energy resources (overall solar energy resources (SER) benchmark), half of which must be met with resources located within Ohio (in-state SER benchmark). This requirement increased to 0.030 percent for 2011.

(3) On January 24, 2011, in Case No. 11-411-EL-ACP (11-411), the Companies filed an application requesting that the Commission make a *force majeure* determination pursuant to Section 4928.64(C)(4), Revised Code, regarding the Companies' compliance with the overall SER benchmark for 2010. In the application, the Companies requested that the Commission make a *force majeure* determination to reduce the Companies' overall SER benchmark to the amount actually acquired by the Companies in 2010.

(4) On April 11, 2011, in 11-411, FirstEnergy filed a notice of withdrawal of its January 24, 2011, *force majeure* application on

the basis that it had procured additional in-state solar renewable energy credits (SRECs).

(5) Thereafter, on April 15, 2011, in the above-captioned case, FirstEnergy refiled its *force majeure* application to reflect the additional in-state SRECs it had acquired. Additionally, FirstEnergy asserts that, despite its best efforts, it was able to acquire only 1,629 of the 3,206 SRECs required to meet its 2010 in-state SER benchmark. Consequently, FirstEnergy requests a *force majeure* determination as to the shortfall, specifically, 1,577 SRECs.

(6) Intervention in this proceeding was granted to the Environmental Law and Policy Center (ELPC), Ohio Energy Group (OEG), and Nucor Steel Marion (Nucor). Additionally, admission *pro hac vice* was granted to Michael K. Lavanga, appearing on behalf of Nucor. Thereafter, motions to intervene were filed by the Solar Alliance (SA), Ohio Manufacturer's Association Energy Group (OMAEG), Citizen Power, and Ohio Consumers' Counsel (OCC). No memoranda contras were filed as to the motions to intervene. The Commission finds that the motions to intervene are reasonable and shall be granted.

(7) In its application, FirstEnergy initially emphasizes that the Companies were able to meet 100 percent of their 2010 overall renewable energy resources benchmark and their 2010 overall SER benchmark. FirstEnergy states that the Companies diligently and proactively procured renewable energy credits (RECs) from existing in-state renewable resources and other states deliverable into Ohio through requests for proposals (RFPs) conducted by the Companies. Nevertheless, the Companies assert that, despite good-faith efforts, the Companies were only able to obtain 1,629 in-state SRECs, or 51 percent of the required in-state SER benchmark.

The Companies specify that they sought the required SRECS by sponsoring four RFPs, soliciting known suppliers for SRECs, contacting SREC brokers, participating in SREC auctions, and considering SREC banking and long-term contracts. Even more specifically, the Companies divulge that they had discussions with, and received proposals from, two large SREC suppliers regarding long-term contracts for the purchase of RECs, but

that neither of these suppliers could commit to long-term contracts that would sufficiently supply in-state SRECs.

Additionally, the Companies emphasize that, pursuant to the stipulation in the Companies' second ESP, the Companies will conduct an RFP to purchase RECs using long-term contracts. See *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 (10-388), Opinion and Order (August 25, 2010) at 8-11; *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 (10-2891). The Companies comment that, if the Companies' application to conduct the RFP in 10-2891 is successful, the Companies will enter into long-term contracts with the successful bidders for the purchase of SRECs, which will be used toward meeting future compliance requirements, including any 2010 shortfall that the Commission may incorporate into its 2011 in-state SER benchmark.

The Companies additionally state that entering into long-term contracts with suppliers for the purchase of RECs has been complicated by the Companies' high levels of shopping among customers and that construction of solar facilities has been impractical because the Companies own no generation facilities. The Companies conclude that, despite actively and reasonably pursuing all options of obtaining in-state SRECs, there was an insufficient number of in-state SRECs available for the Companies to meet their 2010 in-state SER benchmark.

(8) By entry issued May 6, 2011, the attorney examiner established a procedural schedule pursuant to Rule 4901:1-40-06(A), Ohio Administrative Code (O.A.C.), setting June 6, 2011, as the deadline for the filing of initial comments on the Companies' *force majeure* application and June 20, 2011, as the deadline for reply comments.

(9) By entry issued May 26, 2011, the attorney examiner extended the deadline for the filing of initial comments to June 27, 2011,

and the deadline for filing reply comments to July 11, 2011, pursuant to Staff's motion.

(10) Initial comments were timely filed by Nucor, OEG, SA, OMAEG, ELPC, OCC and Citizen Power, and Staff.

(11) Nucor comments that FirstEnergy's status report does not contain enough information to assess whether FirstEnergy's REC purchases were reasonable and prudent. Specifically, Nucor contends that the status report does not provide information on the actual quantity and cost of the RECs and SRECs that FirstEnergy acquired to meet the renewable energy requirements. Further, Nucor contends that the report does not explain the process FirstEnergy uses to acquire RECs and SRECs, and what portion of the renewable energy cost FirstEnergy recovers through Rider AER, if any, is attributable to process costs rather than REC or SREC costs. Nucor argues that, in order to ensure transparency, FirstEnergy should be required to provide this specific information and, further, should show that the costs incurred are reasonable and prudent.

Nucor next comments that FirstEnergy appears to have exceeded, and continues to exceed, the 3 percent cost cap set by Section 4928.64(C)(3), Revised Code. According to Nucor's calculations, the total cost of generation to customers while satisfying an alternative energy portfolio standard requirement exceeds the cost of generation to customers without satisfying that alternative energy portfolio standard requirement by 4.88 percent, in excess of the 3 percent cap. Nucor argues that failure to apply the cap will have a significant impact on all customers and, particularly, large commercial and industrial customers.

(12) OMAEG comments that it supports the comments filed by Nucor regarding the lack of information in FirstEnergy's 2010 annual report, the potentially unreasonable costs of FirstEnergy's compliance with the renewable energy resources benchmarks in S.B. 221; and the likelihood that FirstEnergy's compliance strategy resulted in exceeding the 3 percent cost cap in Section 4928.64(C)(3), Revised Code. Further, OMAEG argues that the Commission should direct FirstEnergy to provide additional information in order to allow interested

parties, including OMAEG, to fully evaluate the 2010 annual report. Specifically, OMAEG requests the following categories of information: (a) detailed work papers providing support for the data in Exhibit A to FirstEnergy's 2010 annual report filed with the Commission in the above-captioned proceeding; (b) a detailed description of the methods used by FirstEnergy to acquire RECs and SRECs; and (c) an explanation of whether FirstEnergy believes the 3 percent cost cap was exceeded in 2010.

(13) In its comments, OEG argues that FirstEnergy's Rider AER for service rendered on or after April 1, 2011, varies by rate schedule, but is approximately $2.7/mwh. Thus, given FirstEnergy's total Ohio retail sales for 2011, OEG calculates the rate increase required to pay for the RECs and SRECs needed for compliance to be approximately $140.9 million. OEG further argues that FirstEnergy has provided no analysis or quantification to demonstrate that a rate increase of $140.9 million is in compliance with the 3 percent cap.

(14) SA argues in its comments that FirstEnergy failed to demonstrate a good-faith effort as required by Section 4928.64(C)(4)(c), Revised Code. Specifically, SA contends that FirstEnergy only sought immediately-available SRECs from existing systems and refused to solicit long-term contracts required for new system construction. Further, SA argues that there is no merit to FirstEnergy's argument that uncertainty over the shopping rates of its customers justifies avoidance of long-term SREC contracting.

SA additionally argues that FirstEnergy's residential program is flawed. Specifically, SA contends that FirstEnergy's Ohio Residential Renewable Energy Credit program (residential program), which offers 15-year contracts to residential customers for the purchase of RECs, fails to meet the good-faith standard because it resets REC purchase prices on an annual basis and has secured contracts with only 8 customers. SA concludes that long-term contracts are the solution to compliance with the 2009 and 2010 overall renewable energy resources benchmarks and that FirstEnergy's recent pursuit of long-term contracts does not excuse its failure to comply in 2009 and 2010. Consequently, SA opposes FirstEnergy's application for a *force majeure*.

(15) ELPC initially comments that the Commission's approval of FirstEnergy's 2009 *force majeure* application was contingent on FirstEnergy meeting its revised 2010 benchmarks. 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-ACP (09-1922), Finding and Order (March 10, 2010) at 4. Consequently, ELPC argues that, because FirstEnergy failed to meet its revised 2010 benchmarks, the Commission should assess the 2009 alternative compliance payment. Additionally, regarding FirstEnergy's 2009 *force majeure* application, ELPC argues that, in 2009, members of OCEA alerted the Commission and the Companies that FirstEnergy's then-strategy to comply with its overall SER benchmark would not be successful in 2010, and suggested long-term commitments with potential solar developers in order to comply with the 2010 overall SER benchmark. See 09-1922, Joint Comments (March 9, 2010) at 8-9.

Next, ELPC contends that FirstEnergy is not entitled to a *force majeure* waiver of its 2010 in-state SER benchmark because FirstEnergy did not make a good faith effort to comply as required by Section 4928.64(C)(4)(b), Revised Code, or pursue all reasonable compliance options as required by Rule 4901:1-06-40(A)(1), O.A.C. Specifically, ELPC argues that FirstEnergy did not pursue long-term contracts for most of 2010 and its single attempt to procure SRECs through long-term contracts in December 2010 was insufficient and untimely; did not pursue all reasonable compliance options or comply with the Commission's order to pursue its adjusted 2010 benchmark by "all means available," including by constructing new solar generation; and should modify its residential program to eliminate flaws similar to the Company's SREC contracting strategy and extend it to further Ohio's statutory policy in Section 4928.02(C), Revised Code.

(16) In support of its first specific argument, ELPC cites Rule 4901:1-40-06(A)(1), O.A.C., which it argues requires a utility to "demonstrate that it pursued . . . long-term contracts" before it may receive a *force majeure* determination. Additionally, in support of its second specific argument, ELPC cites 09-1922,

Finding and Order, at 4, which directed that "FirstEnergy is responsible for meeting the statutory SER benchmarks through all means available, if the RFP proves not to be a viable means to meet the statutory requirement." Further, ELPC argues that FirstEnergy made a business decision to eliminate generation but that this business decision does not warrant a *force majeure* determination and that FirstEnergy should not be permitted to divest itself of generation in order to shirk its responsibilities under S.B. 221. Finally, in support of its third specific argument, ELPC criticizes the Companies for their discontinuation of the residential program, stating that the program has been successful in producing SRECs and that the program is required by 10-388, Opinion and Order (August 25, 2010) and 10-388, Second Supplemental Stipulation (July 22, 2010) at 2-3.

(17) ELPC next argues that FirstEnergy's efforts have been minimal in contrast to the other utilities that are complying with the law by using long-term contracts and investing in Ohio solar energy products. Finally, ELPC emphasizes that an application for *force majeure* requires the applicant to meet a high burden, and argues that FirstEnergy has not met its burden. ELPC concludes that FirstEnergy should be required to pay a total of $1,461,850 in penalties for noncompliance, including $635,200 for the Companies' 2010 SREC shortfall and $826,650 as an additional penalty due to FirstEnergy's purported breach of its conditional 2009 SER benchmark waiver granted in 09-122.

(18) OCC and Citizen Power jointly comment that, in 2010, OCC, OEC, ELPC, SA, Citizen Power, and the Vote Solar Initiative commented that FirstEnergy's strategy to comply with its overall SER benchmark would not be successful in 2010, and stated that FirstEnergy should enter into long-term commitments with potential solar developers. See 09-1922, Joint Comments (March 9, 2010) at 8-9.

Further, OCC and Citizen Power set forth their support for the comments filed by ELPC urging the Commission to reject the Companies' *force majeure* request regarding its 2010 in-state SER benchmark. OCC and Citizen Power recommend that the Commission impose an alternative compliance payment in excess of $600,000 for the 2010 shortfall, as well as an additional penalty of $800,000 due to FirstEnergy's breach of the 2009

conditional SER benchmark waiver, for a total penalty of $1.5 million.

(19) In its comments, Staff initially emphasizes that the Companies' request for a *force majeure* determination is the sole issue in this proceeding. Consequently, Staff argues that comments of several parties on the 3 percent cost consideration included in Section 4928.64(C)(3), Revised Code, while warranting further investigation, are distinct from the request for a *force majeure* determination and would be more appropriately addressed in the Companies' Rider AER proceedings. Staff recommends, however, that an external auditor be retained by the Commission to assist in the investigation of these issues, with the cost to be paid by the Companies and included for recovery in the Companies' Rider AER, in order to complete a review of the Companies' status relative to Section 4928.64(C)(3), Revised Code, as well as the reasonableness of the Companies' aggregate compliance costs.

Next, Staff states that it has reviewed the Companies' filing and the comments submitted and does not believe that the Companies fully evaluated all reasonable compliance options. Specifically, Staff comments that the potential to self-generate SRECs was not fully evaluated in response to FirstEnergy's observations about a constrained in-state SREC market. Staff comments that, although the Companies briefly addressed the topic of constructing solar generation in their filing, their rationale for rejecting this option was faulty. Staff contends that a shortage of solar expertise could surely be rectified. Additionally, Staff finds that it is unreasonable to interpret the statute, including its specific reference to REC banking, as being limited to third-party development. Consequently, Staff comments that it cannot confirm that the Companies satisfied the requirements to support a *force majeure* determination under Rule 4901:1-40-06(A)(1), nor the Commission's decision in 09-1922.

(20) Reply comments were timely filed by FirstEnergy, Nucor, and Staff.

(21) In its reply comments, FirstEnergy initially voices its agreement with Staff's assessment that the 3 percent guideline set forth in Section 4828.64(C)(3), Revised Code, as discussed by OEG and

Nucor, is not appropriate for discussion in this proceeding as the matter *sub judice* does not involve any cost recovery request.

Additionally, FirstEnergy reiterates that there were insufficient in-state SRECs available in the market in 2010. FirstEnergy contends that, although other intervening parties commented that the Companies did not make a good faith effort to comply because the Companies did not attempt several different methods of procuring SRECs, that none of these parties presented any argument or evidence that the Companies would have procured 2010-vintage SRECs through these proffered methods.

FirstEnergy next contends that ELPC's and SA's comments expand the statutory requirements beyond the General Assembly's intent. Specifically, FirstEnergy argues that Section 4928.64(C)(4)(b), Revised Code, does not require that a public utility *enter into* long-term contracts for SREC supplies before a *force majeure* determination can be made, but only requires the utility to *seek* SRECs through long-term contracts. FirstEnergy argues that it did attempt to seek SRECs through long-term contracts by discussing and receiving proposals from two large SREC suppliers for long-term contracts as set forth in its application, but that those suppliers could not provide enough in-state 2010 SRECs to bring the Companies into compliance.

Next, FirstEnergy challenges ELPC's statement that the Companies were warned in 2009 that their compliance strategy would fall short in 2010 and the Companies waited too long to pursue long-term contracts, by pointing out that the warning referred to by ELPC was not made in 2009, but was set forth in a March 2010 filing by ELPC. Further, FirstEnergy argues that there is no guarantee that outcomes would have been different had discussions with potential long-term suppliers taken place earlier. As support, FirstEnergy points out that Duke Energy Ohio, Inc., has also been unable to meet its 2010 in-state SREC benchmark without modification, even with long-term SREC supply agreements.

FirstEnergy next points out that just recently, in June 2011, it received a Commission order modifying and approving the request for proposal (RFP) process in 10-2891 and is currently

addressing implementation issues related to the RFP in its application on rehearing.

FirstEnergy additionally argues that retaining the residential program would not have brought the Companies into compliance with 2010 in-state SREC requirements, although both ELPC and SA criticized FirstEnergy on this issue. FirstEnergy points out that the residential program was not discontinued, but expired by its own terms in May 2011. Consequently, FirstEnergy concludes that the expiration of the program in May 2011 had no impact on the ability or good-faith efforts of the Companies to meet their 2010 SREC benchmarks.

Next, FirstEnergy disputes ELPC's and Staff's suggestions that the Companies should have pursued construction of solar facilities. FirstEnergy argues that, under its Commission-approved corporate separation plan as required by Section 4928.31, Revised Code, the Companies divested all electric generation assets and have been operating as distribution companies with no generating assets as contemplated and required by their corporate separation plan. FirstEnergy contends that, if the Companies were to build their own solar generation facilities, this action would be in violation of their Commission-approved corporate separation plan and Ohio law. Further, the Companies argue that construction of solar generation facilities would be in violation of their electric security plan (ESP) approved by the Commission in 10-388 because that plan does not provide for construction of solar facilities as a source for electric services and it is unclear how the Companies' investment incurred to build the facilities would be recovered by the Companies.

FirstEnergy further contends that it is unlawful for the Commission to mandate the Companies construct solar facilities because the Supreme Court of Ohio has held that it is "well settled that the generation component of electric service is not subject to commission regulation." *Industrial Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 490, 2008-Ohio-990.

The Companies also argue that it is neither reasonable nor prudent for the Companies to build solar generation,

particularly given that the Companies' average shopping rate is 74 percent. The Companies argue that, given the increasing shopping rate, the number of RECs needed to achieve the statutory benchmarks continues to be reduced. Consequently, the Companies argue that, not knowing how much more shopping will take place, it would be short-sighted for the Companies to engage in such a significant capital investment. Further, the Companies emphasize that the Second Supplemental Stipulation in 10-388 provided for a long-term RFP process that, when fully subscribed, will cover nearly 100 percent of the Companies' need for in-state SRECs, making construction of solar facilities impractical and risky. See 10-388, Opinion and Order (August 25, 2010) at 8-11.

FirstEnergy also takes issue with ELPC's characterization of FirstEnergy's decision to divest itself of generation as a business decision to "shirk their responsibilities to comply with S.B. 221." FirstEnergy responds that the law required divestment of generation, that the Companies divested pursuant to a Commission-approved corporate separation plan, and that the plan to divest was Commission-approved and was made over ten years ago, well before the enactment of the alternative energy benchmarks.

Finally, FirstEnergy comments that OCC's, SA's, and ELPC's request for an assessment of penalties is unlawful and that an audit of the Companies' AER Rider by an outside auditor is not warranted. Specifically, the Companies contend that a penalty is unwarranted as the Companies have met the criteria for a *force majeure* determination and that such an assessment would not be appropriate at this point in the proceedings, as there has been no notice and opportunity for hearing. Additionally, the Companies argue that Staff's recommendation that Rider AER be audited by an outside auditor is unnecessary as the Companies have established an effective review process with Staff.

(22) In its reply comments, Nucor comments that it supports Staff's recommendation for a detailed review of FirstEnergy's compliance costs and status relative to the 3 percent cap. Further, Nucor states that it does not oppose Staff's recommendation of an external auditor. Nucor additionally states that it did not raise the issues of the compliance costs and

application of 3 percent cap in the context of FirstEnergy's *force majeure* request, but in the context of FirstEnergy's 2010 alternative energy compliance report, and reiterates these concerns.

(23) In its reply comments, Staff notes that ELPC in its initial comments proposed an imposition of a $1.5 million penalty on the Companies due to the compliance shortfall. Staff comments that the scope of FirstEnergy's specific request is limited to the request for a *force majeure* determination. Consequently, Staff comments that, only if such request is denied by the Commission, and the imposition of an alternative compliance payment deemed appropriate, will such a discussion be appropriate in the context of the Companies' 2010 annual compliance status report review.

Staff additionally comments on ELPC's criticism of the Companies' residential program's expiration as conflicting with the Second Supplemental Stipulation in 10-388. Staff clarifies that the Companies' residential program was designed to cease enrolling new participants at the end of May 2011, but that customers enrolled prior to the expiration date would continue to participate for the 15-year term. Consequently, the reference in the Second Supplemental Stipulation on which ELPC relies was not intended to require a continuation of the Companies' residential REC program, but was an acknowledgement that delivery of RECs under the program would continue for a 15-year term.

Finally, Staff acknowledges the Companies' indication that they obtained 11 in-state SRECs in 2011 that they intend to apply toward their 2010 in-state SER obligation. ELPC, on the other hand, argues that these 11 in-state SRECs should be applied toward the Companies' 2011 benchmark. Staff comments that there may be a lag associated with reporting generation data and the actual creation of the REC or SREC. Consequently, Staff proposes a three-month settlement period during which entities can secure RECs or SRECs for their accounts. Thus, companies will have until the end of March to settle their compliance accounts for the previous calendar year, with the exception of RECs or SRECs for which the associated electricity was generated during the three-month settlement period. Staff comments that it is unclear when the associated

electricity was generated for the 11 SRECs at issue and that, if the electricity was generated during 2010, Staff would not be opposed to including those particular SRECs toward the Companies' 2010 in-state SER obligation.

(24) Section 4928.64(C)(4), Revised Code, authorizes the Commission to determine whether an insufficient quantity of renewable energy resources was reasonably available in the market to facilitate an electric utility's compliance with the statutory benchmarks. The statute further provides that the Commission shall consider the electric utility's good faith effort to acquire sufficient renewable energy resources in Ohio or other jurisdictions within PJM interconnection, L.L.C., or the Midwest Independent Transmission System Operator.

(25) In considering the Companies' application for *force majeure* determination, the Commission initially notes that, by Finding and Order issued June 8, 2011, in 10-2891, the Commission approved FirstEnergy's application for approval to conduct an RFP to purchase RECs through ten-year contracts. The application specifically sought authorization to elicit competitive bids to purchase through ten-year contracts the annual delivery of 5,000 in-state SRECs and 20,000 overall RECs. Additionally, in the Finding and Order, the Commission referred to the 2009 shortfall and emphasized that "the Companies are obligated to meet their statutory benchmark for RECs and nothing in this Finding and Order precludes the Companies from procuring part of the 2010 shortfall from the RFP." 10-2891, Finding and Order (June 8, 2011) at 10. Further, the combined stipulation approved by the Commission in FirstEnergy's most recent ESP proceeding also provides for the possibility of three additional RFPs to acquire in-state SRECs. 10-388, Second Supplemental Stipulation (July 22, 2010) at 1-2.

Upon review of the application and comments filed in this proceeding, the Commission finds that, in light of the recently-approved RFP to purchase RECs and the fact that the Companies may procure part of the 2010 shortfall from the RFP, the Companies have demonstrated a good faith effort to acquire sufficient in-state SRECs. Further, the Companies sought the required SRECS by sponsoring four RFPs, soliciting known suppliers for SRECs, contacting SREC brokers, and participating in SREC auctions. Further, the Commission notes

that neither the interveners nor Staff have demonstrated that substantial quantities of in-state SRECs were reasonably available in the market.

(26) Consequently, the Commission finds that FirstEnergy has presented sufficient grounds for the Commission to reduce the Companies' overall 2010 SER benchmark to the level of SRECs acquired in 2010. Additionally, pursuant to Section 4928.64(C)(4)(c), Revised Code, our approval of FirstEnergy's application is contingent upon FirstEnergy meeting its revised 2011 SER benchmark, which shall be increased to include the shortfall for the 2010 SER benchmark, including any shortfall carried over from the Companies' 2009 SER benchmark.

(27) Additionally, as recommended by Staff, the Commission agrees that the scope of FirstEnergy's application is limited to the request for a *force majeure* determination. Consequently, the Commission declines to comment in this case on the parties' comments concerning the three percent cost consideration in Section 4928.64(C)(3), Revised Code, which the Commission agrees would be more appropriately addressed in the AER Rider proceedings.

(28) Finally, the Commission adopts Staff's proposal of a three-month settlement period during which entities can secure RECs or SRECs for their accounts. Consequently, as Staff recommends, the Commission finds that the Companies may apply the 11 in-state SRECs they obtained in 2011 toward their 2010 in-state SER obligation if the electricity was generated during 2010. If the electricity was generated during 2011, the Companies may only apply these SRECs toward their 2011 SER obligation.

It is, therefore,

ORDERED, That the motions to intervene filed by SA, OMAEG, Citizen Power, and OCC be granted. It is, further,

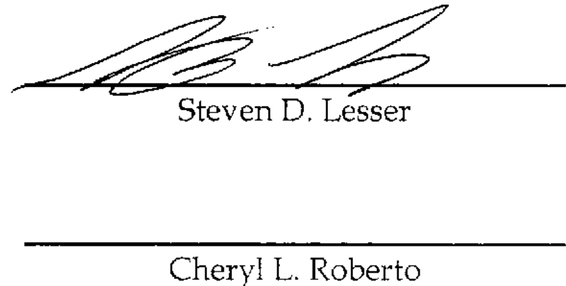
ORDERED, That FirstEnergy's application be granted in accordance with Findings (26) and (28). It is, further,

ORDERED, That FirstEnergy's 2011 overall SER benchmark be increased as set forth in Finding (26). It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman



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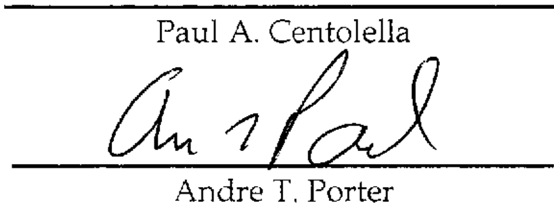

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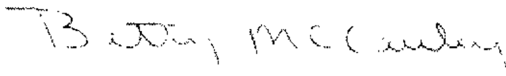

Betty McCauley
Secretary