

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application by)
Noble Americas Energy Solutions LLC) Case No. 11-2384-EL-ACP
for a Waiver from 2010 Ohio Sited Solar)
Energy Resource Benchmarks.)

FINDING AND ORDER

The Commission finds:

- (1) Noble Americas Energy Solutions LLC (Noble Solutions) is an electric services company as defined in Section 4928.01(A)(9), Revised Code.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric services companies to acquire a portion of their electricity supply for retail customers in Ohio from renewable energy resources. Specifically, the statute requires that, for 2010, a portion of the electricity sold by means of retail electric sales in Ohio must come from alternative energy resources (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) Additionally, 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 service company's compliance with the statutory benchmarks. The statute further provides that the Commission shall consider the electric service company's good faith effort to acquire sufficient renewable energy resources to comply with the benchmark and the availability of renewable energy resources in Ohio or other jurisdictions within the PJM Interconnection, LLC (PJM)

and the Midwest Independent Transmission System Operator (MISO).

- (4) On April 11, 2011, Noble Solutions filed an application requesting that the Commission make a *force majeure* determination pursuant to Section 4928.64(C)(4), Revised Code, regarding Noble Solutions' compliance with its SER benchmark for 2010. In its application, Noble Solutions notes that it made a similar request for 2009 that was approved by the Commission, contingent upon Noble Solutions meeting a revised 2010 SER benchmark, which was increased to include the shortfall for 2009.¹

In support of its request for a *force majeure* determination, Noble Solutions states that it was unable to meet its revised 2010 SER benchmark due to lack of availability of in-state solar renewable energy credits (SRECs). Noble Solutions states that it contacted brokers and producers in search of 2010 SRECs, but that in-state 2010 SRECs are practically unobtainable and that demand has so far outstripped the supply that the asking price for in-state 2010 SRECs is above the alternative compliance payment (ACP) amount. Consequently, Noble Solutions requests that the Commission make a *force majeure* determination and reduce Noble Solutions' revised 2010 SER benchmark to the amount of SRECs actually acquired by Noble Solutions.

- (5) By entry issued May 26, 2011, the attorney examiner established a procedural schedule pursuant to Rule 4901:1-40-06(A), Ohio Administrative Code (O.A.C.), setting June 27, 2011, as the deadline for the filing of initial comments on Noble Solutions' request for a *force majeure* determination and July 11, 2011, as the deadline for reply comments.
- (6) On June 27, 2011, Staff filed comments regarding Noble Solutions' request for a *force majeure* determination. Staff comments that, while Noble Solutions indicates that it

¹ In the Matter of the Application of the Retail Electric Supply Association for an Amendment to the 2009 Solar Energy Resource Benchmark Pursuant to Section 4928.64(C)(4), Revised Code, Case No. 10-428-EL-ACP, Finding and Order (April 28, 2010).

contacted several brokers, its filing does not indicate if it pursued any of the other options enumerated in Rule 4901:1-40-06, O.A.C., assigning the requesting party the burden of proof to demonstrate that it pursued all reasonable compliance options prior to seeking a *force majeure* determination. Consequently, Staff states that it cannot confirm, based on Noble Solutions' filing, that Noble Solutions satisfied the requirements in Rule 4901:1-40-06(A)(1), O.A.C., to support a *force majeure* determination.

Staff additionally notes that, although Noble Solutions indicates it has a vendor capable of supplying the necessary in-state SRECs to satisfy its 2009-2011 in-state SER benchmark, Noble Solutions does not provide any details on commitments or contracts it has with this entity. Finally, Staff indicates that, despite Noble Solutions' insinuation that the solar ACP represents a price ceiling when considering available SRECs, there is no statutory or regulatory requirement that establishes the applicable ACP as a pricing threshold that cannot be exceeded.

- (7) No reply comments were filed in this case.
- (8) Upon review of Noble Solutions' request for a *force majeure* determination and Staff's comments, the Commission finds that Noble Solutions' request should be granted. As noted above, 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 service company's compliance with the statutory benchmarks. Additionally, the statute further provides that the Commission shall consider the electric utility's good faith effort to acquire sufficient renewable energy resources in Ohio.

Here, Noble Solutions states that it contacted brokers and producers in search of 2010 SRECs, but that in-state 2010 SRECs are practically unobtainable and that demand has so far outstripped the supply that the asking price for in-state 2010 SRECs is above the ACP amount. In light of the

preceding, the Commission finds that Noble Solutions has presented evidence that an insufficient quantity of in-state 2010 SRECs was reasonably available in the market to facilitate Noble Solutions' compliance with its benchmark. As we have recognized in numerous proceedings today,² other electric utilities and electric services companies likewise experienced difficulties in meeting their in-state solar energy resources benchmarks for 2010. It is apparent that the market for in-state solar energy resources is still advancing to the point at which there will be sufficient in-state solar energy resources available for all electric utilities and electric services companies to be able to meet the statutory standard, which was merely in its second year of implementation in 2010. However, although we have found today that an adequate market for in-state SRECs did not exist in 2010, the Commission expects all electric utilities and electric service companies to fully comply with the statutory requirement to engage in good faith efforts to acquire sufficient solar energy resources as set forth in Section 4928.64(c)(4)(b), Revised Code.

- (9) Consequently, the Commission finds that Noble Solutions has presented sufficient grounds for the Commission to reduce Noble Solutions' 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 Noble Solutions' application is contingent upon Noble Solutions meeting its revised 2011 SER benchmark, which shall be revised to include the shortfall for the 2010 SER benchmark.

² *In the Matter of Direct Energy Business LLC for a Waiver from Meeting the 2010 Ohio Sited Solar Energy Resource Benchmarks*, Case No. 11-2447-EL-ACP, Finding and Order (August 3, 2011); *In the Matter of the Alternative Energy Portfolio Status Report of Dominion Retail, Inc.*, Case No. 11-2470-EL-ACP, Finding and Order (August 3, 2011); *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 Section 4928.64(C)(4)(a), Revised Code*, Case No. 11-2479-EL-ACP, Finding and Order (August 3, 2011).

It is, therefore,

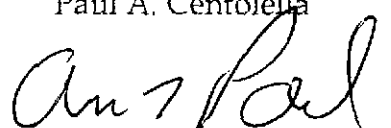
ORDERED, That Noble Solutions' request for a *force majeure* determination be granted in accordance with finding (9). It is, further,

ORDERED, That Noble Solutions' 2011 overall SER benchmark be increased as set forth in finding (9). 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

Paul A. Centolella


Andre T. Porter



Steven D. Lesser

Cheryl L. Roberto

GAP/MLW/sc

Entered in the Journal

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Betty McCauley
Secretary