

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Ohio Edison Company, the)
Cleveland Electric Illuminating Company,) Case No. 10-499-EL-ACP
and the Toledo Edison Company's Annual)
Status Report.)

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) 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 requires that, in 2009, a portion of the electric utility's supply for its standard service offer must come from alternative energy resources (overall renewable energy resources benchmark), including 0.004 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 0.010 percent for 2010 and 0.030 percent for 2011.
- (3) Rule 4901:1-40-05(A), Ohio Administrative Code (O.A.C.), requires that, unless otherwise ordered by the Commission, each electric utility file by April 15 of each year an annual alternative energy portfolio status report. The report must analyze all activities the company undertook in the previous year in order to demonstrate how pertinent alternative energy portfolio benchmarks and planning requirements have been or will be met. Additionally, Commission Staff must conduct an annual compliance review with regard to the benchmarks. Further, Rule 4901:1-40-08(A), O.A.C., provides that electric utilities that fail to meet their applicable benchmarks are required to remit a compliance payment based on the amount of noncompliance in the absence of a *force majeure* determination.

- (4) On April 15, 2010, FirstEnergy filed its 2009 alternative energy portfolio status report pursuant to Section 4928.64, Revised Code, and Rule 4901:1-40-05(A), O.A.C. In its report, FirstEnergy proposes baselines of 20,889,394 megawatt-hours (MWhs) for OE, 17,166,038 MWhs for CEI, and 9,070,946 MWhs for TE, or an aggregate baseline of 47,126,378 MWhs for FirstEnergy. FirstEnergy indicates that its baseline is based on its standard offer sales in 2006, 2007, and 2008. Using these baselines and the 2009 statutory benchmarks, FirstEnergy calculated its overall renewable energy resources benchmarks as follows: OE, 51,387 MWhs; CEI, 42,228 MWhs; and TE, 22,314 MWhs. Additionally, FirstEnergy calculated its overall SER benchmarks as follows: OE, 836 MWhs; CEI, 687 MWhs; and TE, 363 MWhs. FirstEnergy asserts that it satisfied its overall renewable energy resources benchmark but fell short of satisfying its overall SER benchmark. In Case No. 09-1922-EL-ACP (09-1922), FirstEnergy sought a *force majeure* determination, pursuant to Section 4928.64(C)(4), Revised Code, which the Commission granted. With respect to its overall SER benchmark, FirstEnergy indicates that it obtained an aggregate 61 solar renewable energy credits (RECs), which is compliant with its adjusted 2009 overall SER benchmark. FirstEnergy intends to add the remaining 1,825 solar RECs to its 2010 overall SER benchmark, as permitted by 09-1922.
- (5) Motions to intervene were filed by the Ohio Environmental Council (OEC), the office of the Ohio Consumers' Counsel (OCC), and Citizen Power, Inc. (Citizen Power) (collectively referred to as OCEA). The Commission finds that the motions to intervene filed by OEC, OCC, and Citizen Power are reasonable and should be granted.
- (6) On May 17, 2010, a motion *pro hac vice* was filed on behalf of Theodore S. Robinson, representing Citizen Power. No one filed memoranda contra this motion. The Commission finds that this motion should be granted.
- (7) On May 17, 2010, OCEA filed comments on FirstEnergy's report. In their comments, OCEA does not contest FirstEnergy's claims of compliance with the overall renewable energy resources benchmark or the adjusted overall SER benchmark but criticizes FirstEnergy's efforts to secure solar resources. Specifically, OCEA comments that FirstEnergy

should have begun soliciting solar RECs earlier in 2009; that FirstEnergy refused to enter into long-term contracts for solar RECs, thus limiting interest by solar developers; and, that FirstEnergy's residential REC purchase program was not available via FirstEnergy's website until May 7, 2010. OCEA comments that these deficiencies must be addressed to improve future compliance efforts and that FirstEnergy's residential REC program should be continued as a means of advancing Ohio economic development.

- (8) On May 4, 2011, Staff filed findings and recommendations on FirstEnergy's alternative energy portfolio status report. Initially, Staff finds that FirstEnergy was required to comply with the terms of the alternative energy portfolio benchmarks for 2009.

Additionally, Staff indicates that it has reviewed FirstEnergy's computations of its baselines for OE, TE, and CEI and compliance obligations for 2009. Staff reports that the proposed baselines are not unreasonable. Further, Staff finds that FirstEnergy accurately computed its 2009 compliance obligations. Staff further indicates that it reviewed FirstEnergy's GATS reserve subaccount information and confirmed that the RECs originated from generating facilities certified by the Commission and were associated with electricity generated during the applicable time frame.

Additionally, Staff notes that FirstEnergy's GATS reserve subaccount contains 4,138 more RECs than were needed for 2009 compliance and were not reflected in the appendix accompanying FirstEnergy's annual filing. Staff indicates that, upon discussing this issue with FirstEnergy, it was discovered that these 4,138 RECs were inadvertently included in the reserve subaccount for 2009 and that GATS representatives were unable to remove the RECs from the reserve subaccount as they are now considered retired.

With respect to its unadjusted 2009 overall SER benchmark, Staff finds that FirstEnergy had a deficiency of 1,825 solar RECs. However, as a result of its review, Staff recommends that FirstEnergy be found in compliance with its 2009 overall renewable energy resources benchmark and its adjusted overall SER benchmark. Staff recommends that FirstEnergy add its

2009 overall SER shortfall to its overall SER benchmark for 2010, consistent with the Commission's decision in 09-1922.

Finally, Staff states that the 4,138 extra RECs that were inadvertently retired should be eligible to be counted against a future overall renewable energy resources benchmark, as long as the timing of that usage does not conflict with Rule 4901:1-40-04(D)(3), O.A.C.

- (9) Upon review of FirstEnergy's alternative energy portfolio status report, the comments filed, and Staff's findings and recommendations, the Commission finds that FirstEnergy is in compliance with its 2009 overall renewable energy resources benchmark and adjusted overall SER benchmark. Further, the Commission finds that the 4,138 extra RECs that were inadvertently retired may be eligible to be counted against a future overall renewable energy resources benchmark in accordance with Staff's recommendation in Finding (8). Additionally, the Commission takes note of OCEA's request to review the steps FirstEnergy is taking to ensure compliance with its adjusted 2010 overall SER benchmark. However, the Commission finds that such a review, if necessary at all, would be more appropriately undertaken in FirstEnergy's 2010 annual report. Further, the Commission finds that FirstEnergy's 2010 overall SER benchmark shall be increased by 1,825 solar RECs consistent with the Commission's ruling in 09-1922. Finally, we find that FirstEnergy's alternative energy portfolio status report for 2009 should be accepted.

It is, therefore,

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

ORDERED, That the motion for admission *pro hac vice* of Theodore S. Robinson be granted. It is, further,

ORDERED, That FirstEnergy's alternative energy portfolio status report for 2009 be accepted in accordance with finding (9). It is, further,

ORDERED, That FirstEnergy's 2010 overall SER benchmark be increased to include the shortfall for 2009, as calculated by Staff in its findings and recommendations. It is, further,

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

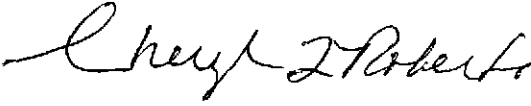
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


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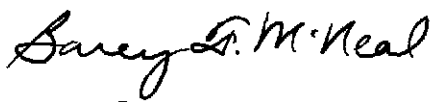

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