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**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Long-Term Forecast :  
Report of **Ohio Power Company** and : **Case No. 10-501-EL-FOR**  
Related Matters. :

In the Matter of the Long-Term Forecast :  
Report of **Columbus Southern Power** : **Case No. 10-502-EL-FOR**  
**Company** and Related Matters. :

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**POST-HEARING BRIEF**  
**SUBMITTED ON BEHALF OF THE STAFF OF**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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## TABLE OF CONTENTS

### Page

INTRODUCTION.....	1
DISCUSSION .....	2
I.    The Issues.....	2
II.   The Partial Stipulation .....	4
III.  Three Part Test .....	5
IV.  Ohio Revised Code Section 4935.04(F) .....	5
V.    Need for Turning Point .....	6
VI.   Future Issues .....	8
CONCLUSION .....	9
CERTIFICATE OF SERVICE.....	11

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**INTRODUCTION**

This is a very simple case. It presents two issues, one unchallenged and the other self-evident. The forecast submitted is unchallenged. Accordingly the Commission should find that the forecast has met the standard provided in R.C. 4935.04. Further the record shows that there is likely to be a shortage of in state solar renewable energy credits (RECs). The Turning Point Solar project is the only plan before the Commission which would address this possibility. In this sense the Turning Point Solar project is “needed” and the Commission should so find. All the more controversial issues as to cost-effectiveness, potential alternatives, and the potential availability of a non-bypassable charge should be vetted in a Turning Point Solar specific case if the Commission chooses to open one or an American Electric Power (AEP) standard service offer (SSO) case as appropriate.

## **DISCUSSION**

### **I. The Issues**

Forecasting cases are controlled by R.C. 4935.04. The Commission is charged to:

(F) Based upon the report furnished pursuant to division (C) of this section and the hearing record, the commission, within ninety days from the close of the record in the hearing, shall determine if:

(1) All information relating to current activities, facilities agreements, and published energy policies of the state has been completely and accurately represented;

(2) The load requirements are based on substantially accurate historical information and adequate methodology;

(3) The forecasting methods consider the relationships between price and energy consumption;

(4) The report identifies and projects reductions in energy demands due to energy conservation measures in the industrial, commercial, residential, transportation, and energy production sectors in the service area;

(5) Utility company forecasts of loads and resources are reasonable in relation to population growth estimates made by state and federal agencies, transportation, and economic development plans and forecasts, and make recommendations where possible for necessary and reasonable alternatives to meet forecasted electric power demand;

(6) The report considers plans for expansion of the regional power grid and the planned facilities of other utilities in the state;

(7) All assumptions made in the forecast are reasonable and adequately documented.<sup>1</sup>

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<sup>1</sup> Ohio Rev. Code Ann. § 4935.04(F) (West 2012).

These are the traditional forecasting issues.

With the passage of SB 221 an additional issue has been added.

R.C. 4928.143(B)(2)(c) allows the imposition of a non-bypassable charge by an EDU for a generating facility that meets a number of conditions. As is relevant here, one of these conditions is:

However, no surcharge shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility.<sup>2</sup>

Statutorily, resource plans for EDU's are submitted in forecasting cases, specifically:

(C) Each person owning or operating a major utility facility within this state, or furnishing gas, natural gas, or electricity directly to more than fifteen thousand customers within this state shall furnish a report to the commission for its review. The report shall be furnished annually, except that for a gas or natural gas company the report shall be furnished every three years. *The report shall be termed the long-term forecast report and shall contain:*

A year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of *the resource plan* to meet demand....<sup>3</sup>

Thus, where an EDU is contemplating seeking a non-bypassable charge through an ESP under R.C. 4928.143(B)(2)(c), the EDU must have the need for that facility considered in a forecasting case. AEP has sought just this sort of review in this docket.

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<sup>2</sup> Ohio Rev. Code Ann. § 4928.143(B)(2)(c) (West 2012).

<sup>3</sup> Ohio Rev. Code Ann. § 4935.04(C)(1) (West 2012) (emphasis added).

In sum, the case presents two sets of issues: does the forecast comply with R.C. 4935.04(F); and is the Turning Point Solar project needed within the meaning of R.C. 4928.143(B)(2)(c)?

## **II. The Partial Stipulation**

The answer to both questions posed above is yes as supported by the record and a Partial Stipulation submitted on November 11, 2011.<sup>4</sup> The Partial Stipulation provides first:

The Commission should make all necessary findings that AEP Ohio's application and subsequent filings in these dockets comply with and satisfy the requirements of R.C. 4935.04 and O.A.C. 4901:5-3 and 4901:5-5 relating to the long term forecast, resource planning, and related requirements.<sup>5</sup>

This agreement resolves the first issue. The filing meets the forecasting criteria. The Partial Stipulation further provides:

Based on resource planning projections submitted by AEP Ohio pursuant to R.C. 4982.143(B)(2)(c), and the provisions of 4928.64(B)(2) that require AEP Ohio to obtain alternative energy resources including solar resources located in Ohio, the Commission should find that there is a need for the 49.9 MW solar facility known as the Turning Point Solar Project ("Turning Point") during the LTFR planning period as described herein.<sup>6</sup>

This agreement resolves the second issue. Turning Point is needed.

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<sup>4</sup> AEP/Staff Jt. Ex. 1.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 3-4.

### **III. Three Part Test**

The usual standard for review of partial stipulations is termed the “three part test.”

In considering the reasonableness of a stipulation, the Commission uses the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

The Supreme Court has endorsed the Commission’s analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities in *Industrial Energy Consumers of Ohio Power Co. v. Pub. Util. Comm’n*, 68 Ohio St. 3d 559, 629 N.E.2d 423 (1994).

### **IV. Ohio Revised Code Section 4935.04(F)**

Applying the three part test to the first issue in the case, the first prong is easily passed. All the parties to the case, signatories and non-signatories, are capable and knowledgeable. Serious discussions occurred, the parties simply disagreed.

There is no real dispute as to the second two prongs for the traditional forecasting issue. The forecast itself provides evidence of its reasonableness. It is supported by the testimony of company witness Castle.<sup>7</sup> The Partial Stipulation supports the finding of

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<sup>7</sup> AEP Ex. 1 at 2-7.

reasonableness. No testimony to the contrary was submitted in the record. Even ignoring the three part test and the Partial Stipulation, the record shows that the LTFR meets the forecasting requirements. Accepting that the forecast criteria have been met benefits the public in that it simply reflects reality. The public can be assured that adequate planning is occurring to provide for future energy requirements. Far from violating any regulatory principles or practices, recognizing that the forecasting process has been accomplished adequately is the goal of the exercise, it is the regulatory principle or practice sought to be accomplished.

In sum, the LTFR should be found to have met the R.C. 4935.04(F) criteria both because it meets the three part test and because that is simply what the evidence shows.

## **V. Need for Turning Point**

Turning to the controversy in the case, again, there is no dispute about the first prong of the test. As noted previously, the parties are all capable and knowledgeable. Serious discussions simply did not lead to agreement. The first prong is passed easily as before.

Recognizing the need for the Turning Point Solar project benefits the public. There is a potential, state-wide problem on the horizon. Statute mandates that increasing amounts of solar RECs be obtained by electric companies half of which must be from facilities located in Ohio.<sup>8</sup> Obtaining sufficient in-state solar RECs has been a problem in

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<sup>8</sup> Ohio Rev. Code Ann. § 4928.64 (West 2012).



the past.<sup>9</sup> Projections indicate that this situation may continue in the future. Staff witness Bellamy performed an analysis of the likely need for, and supply of, solar RECs in Ohio.<sup>10</sup> Mr. Bellamy analyzed four scenarios, with and without Turning Point, and with other high and low solar REC capacity additions. The results of this analysis are worrisome in that to achieve compliance with the statutory mandate, large capacity installations are needed. Without the addition of significant new construction of in-state solar capacity there will simply not be enough solar RECs in existence to meet the need. Someone must build. *At this time*, the Turning Point Solar project is the only certain means to deal with the problem before the Commission. In this sense the Turning Point Solar project is needed. Providing the means to achieve the statutory mandate is beneficial to the public at large. Turning Point keeps that possibility alive. Therefore, the second prong of the test is met.<sup>11</sup>

The third prong of the test is passed as well. Assuring that planning is done adequately to allow compliance with the important statutory initiative represented in R.C. 4928.64 is good regulatory practice. That is what is occurring in the Partial Stipulation. It is important that the Commission be pro active in this regard. As noted previ-

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<sup>9</sup> *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 at 13) (August 3, 2011).

<sup>10</sup> Staff Ex. 1.

<sup>11</sup> As noted previously, even ignoring the test and the Partial Stipulation, finding that Turning Point is needed simply reflects the reality as revealed in the record. Without Turning Point, there is a significant risk that there will be too few solar RECs to meet the state-wide need.

ously, the General Assembly has set a high bar with regard to renewable requirements. Meeting them has been an ongoing challenge. Finding that the Turning Point Solar project is needed aids in this ongoing effort. It keeps alive the only assurance that compliance can be achieved. This is a good practice and meets the final prong of the test.

## **VI. Future Issues**

The non-signatories will raise a large number of concerns about this need determination. They will argue that the plan has not been shown to be cost-effective, that market forces will lead to more construction and obviate the need for Turning Point, that less expensive options may appear, that a non-bypassable charge is inappropriate for various reasons, and doubtless many other things. Although these concerns should be considered by the Commission at the appropriate time, that time is not now. The arguments are premature. Financial issues are not dealt with through forecasting cases. Financial issues should be dealt with through cases where recovery is sought and no recovery is sought for any amount in this case. Whether there is some alternative to Turning Point Solar that is in some way superior must be reserved for a case in which there is some alternative to consider. The record in this case reveals no such alternative rather there is speculation that perhaps someone, somewhere will do something that will help resolve the looming shortfall. Compliance will be achieved through plans not hope and the only plan on offer is Turning Point Solar. The Commission previously in the AEP SSO case indicated that it would establish a docket in which it would consider these other aspects of the Turning Point Solar project. With the rejection of the stipulation in

the AEP SSO case, it is uncertain whether the Commission would consider these matters in a separate case or in the ongoing SSO but regardless of the process to be established by the Commission, it is clear that this is not the venue. The non-signatories will have their opportunity to develop their issues in the appropriate case whether that is a Turning Point specific case or the SSO.

### **CONCLUSION**

There are only two issues in the case. The Commission should find that the LTFR complies with R.C. 4935.04(F). This is uncontested. Further the Commission should find that the Turning Point Solar project is needed in the sense that a facility that produces in-state solar RECs in such a quantity is necessary to meet the state-wide need for such RECs as mandated by R.C. 4928.64. The Commission should not address the other matters that will be raised by the non-signatory parties as these matters are premature and should be considered in either the ongoing AEP SSO or a docket that the Commission establishes at a later date.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, has been served upon the below-named counsel via traditional and electronic mail this 25<sup>th</sup> day of April, 2012.



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