

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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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**BRIEF IN RESPONSE TO SEPTEMBER 5, 2012 ORDER  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**INTRODUCTION**

On September 5, 2012 the Commission directed the parties to this case to file briefs addressing certain listed questions. This brief will address these questions in the same order in which they were presented in the Order.

**DISCUSSION**

**I. How should the Commission properly determine whether there is a need for the Turning Point project?**

This question and the next ask essentially the same thing, what does “need” mean in the context of R.C. 4928.143(B)(2)(c)? The Revised Code does not provide an answer, the term is undefined. In such circumstances the Revised Code does require that “[w]ords and phrases shall be read in context and construed according to the rules of

grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.”<sup>1</sup>

“Need” in this context cannot have a technical or particular meaning. There is no reason to apply some strained technical reading to this common word. The statute in question simply says “...there is need for the facility...” As per the rule of construction, the word should be read in its common meaning.

In common usage “need” means:

1. Necessity or obligation created by some situation;
2. A lack of something useful, required, or desired;
3. Something useful, required, or desired that is lacking; want; requirement;
4.
  - a) condition in which there is a deficiency of something, or one requiring relief or supply;
  - b) a condition of poverty, or extreme want.<sup>2</sup>

The General Assembly has created the need for in-state solar RECs.<sup>3</sup> An electric distribution utility (EDU) or electric services company must have increasing quantities of in-state solar RECs according to the schedule in that code section.<sup>4</sup> EDUs and electric

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<sup>1</sup> R.C. 1.42.

<sup>2</sup> Webster’s New World Dictionary, Second College Edition, Simon and Shuster 1982.

<sup>3</sup> R.C. 4928.64(B).

<sup>4</sup> *Id.*

services companies therefore have a necessity or obligation created by that statute. In-state solar RECs are useful and required to meet that obligation and, as shown by the testimony of Staff witness Bellamy, the supply of in-state solar RECs may be short. This deficiency of in-state solar RECs must be addressed to meet the statutory obligation. Thus, it is clear that there is “need” for the Turning Point project in the ordinary sense of the word.

## **II. How should need be defined?**

See the answer to Question I above.

## **III. What is the proper legal standard to be applied to the Commission’s analysis of need?**

The question of the existence of need is factual rather than legal. Either need exists or it does not. As discussed in the answer to Question I above, the statute provides no definition and the term must be construed in ordinary terms. Thus the need determination should be included as a finding of fact. Pursuant to statute, the Commission must issue its decisions, including findings of fact, in written form.<sup>5</sup> The decisions must be of sufficient detail to permit the Ohio Supreme Court to determine, on appeal, how the Commission reached its decision.<sup>6</sup> Determinations are to be based on evidence in the

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<sup>5</sup> R.C. 4903.09.

<sup>6</sup> *Cleveland Electric Illuminating v. Pub. Util. Comm.*, 4 Ohio St.3d 107 (1983).

record.<sup>7</sup> Thus the legal requirement is that the Commission must look to evidence of record in the case to make a factual determination as to whether need exists and then explain its reasoning in a manner in writing sufficient to allow the Supreme Court to understand that analysis.

#### **IV. Is need limited to energy and capacity only, or does need include compliance with the renewable portfolio standard?**

Energy and capacity cannot be meaningfully separated from compliance with the renewable portfolio standards. They are unavoidably tied by statute. Just as the concept of “capacity” as a separate necessity for the provision of electricity is a relatively recent requirement under the federal structure, the requirement of in-state solar RECs is a relatively recent requirement under Ohio’s structure. For an EDU or electric services company to provide service in Ohio it must have energy *and* capacity *and* in-state solar RECs.<sup>8</sup> All are required. The term “need” as used in R.C. 4928.143 encompasses all three items.

#### **V. What evidence is relevant to the Commission’s determination of need?**

As discussed in the previous answer, the Commission must determine whether there is a need for in-state solar RECs as a factual matter. To make this determination the Commission must consider the balance between supply and demand into the future as

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<sup>7</sup> *Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213.

<sup>8</sup> Other components are required as well but they are not significant to this discussion and are, therefore, ignored.

would be true if one were considering whether any good is “needed.” EDUs show their balance of supply and demand of energy, capacity, or compliance in their resource plans. Staff also notes that, pursuant to R.C. 4928.64(D)(1), the Commission is required to submit annual status reports to the legislature in Ohio’s alternative energy portfolio standard.<sup>9</sup> Although this report focuses on prior compliance years, it also provides information on current market conditions and the Commission’s consideration of important issues in current and developing markets. As such, the assessment provided in this report would be among the items for the Commission to consider in its determination of need.

The future demand for in-state solar RECs is governed by a statutory formula. Specifically an EDU or an electric services company is required to have in-state solar RECs equal to the statutory percentage, varying by year, as shown in the schedule included in R.C. 4928.64(B)(2) of the EDU’s or electric services company’s baseline as calculated under R.C. 4928.64(B). The driver for this calculation is the estimate of future sales which can then be used to estimate the future baseline requirements. This is exactly what Staff witness Bellamy has provided.

Future supply of RECs is done by estimating how many in-state solar RECs will be produced in the relevant future periods. There are two sources of in-state solar RECs, existing facilities and new facilities. While the supply of in-state solar RECs from existing facilities is relatively easy to analyze, the availability of in-state solar RECs from facilities not yet built is more difficult and subjective. Any entity *could* construct a facil-

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<sup>9</sup> This is something that could be considered in weighing decisions of this sort. The report is not in the record of this case however.

ity which would produce in-state solar RECs and such facilities *could* be built at any time. As indicated in the testimony of Staff witness Bellamy, some in-state solar facilities have been built by non-utility entities in the past. More *might* be built in the future. To capture the uncertainty of whether, when and how much may be built in the future, Staff witness Bellamy has included four scenarios describing different construction levels. These scenarios are projections. The only actual proposal before the Commission currently is the Turning Point project. This is the only future source of production known to the Commission at this point in time.

It is the balance or, in this case, the imbalance, between supply and demand, as shown by weighing these factors, that the Commission must use to make its factual determination. Staff witness Bellamy has done just this sort of analysis and that analysis shows that there may be a shortfall<sup>10</sup> of in-state solar RECs given the statutory need. This shortfall shows that the Turning Point project is “needed” based on the evidence in the record.<sup>11</sup>

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<sup>10</sup> It should be remembered that there was a sufficient shortfall of in-state solar RECs that the Commission declared a force majeure situation in 2009 and 2010 pursuant to R.C. 4928.64(C)(4)(c).

<sup>11</sup> To put a finer point on this, the record shows that in-state solar RECs in the quantity that would likely be produced by the Turning Point project are needed. Whether Turning Point is the most cost effective way to obtain in-state solar RECs in this quantity is not a matter discussed in this docket.



**VI. Should the Commission, in evaluating the need for the Turning Point project, solely consider AEP-Ohio's need for the project, or whether the Commission should look beyond the need of the Company or its service territory?**

The statutory need for in-state solar RECs applies to individual utilities. The instant filing seeks a ruling from the Commission that Ohio Power needs RECs. Witness Bellamy amplifies AEP's need by demonstrating that the Turning Point facility will help to meet the needs of all the other utilities in the state.

As the need for in-state solar RECs is statewide, the planning to achieve compliance should be statewide as well. While under the forecasting statutes individual companies are responsible only for their own service areas, the Commission's obligations are to the state as a whole. The Commission is obligated to:

(1) Estimate statewide and regional needs for energy for the forthcoming five- and ten-year periods which, in the opinion of the commission, will reasonably balance requirements of state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources. Other factors and trends which will significantly affect energy consumption such as the effects of conservation measures shall also be included;

(2) Estimate statewide and regional demands within the state for energy for twenty years ahead, to be used in formulation of long-range policies and proposals for reduction of demand, conservation of energy, development of potential sources of energy, and action to affect the rate of growth in demand for energy....<sup>12</sup>

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<sup>12</sup>

R.C. 4935.01(A).

Forecast plans themselves must consider the plans of other utilities.<sup>13</sup> The clear goal is to assure the public in Ohio generally that Ohio will have sufficient means to meet the state's energy needs. Focusing on one company because one company has asked for a need determination does not preclude the Commission from considering the broader needs of the state as a whole.

**VII. Should the Commission consider whether the Turning Point project is needed by other electric utilities or electric services companies in Ohio, or whether the state as a whole has a need for the project?**

See the answer to Question VI above.

**VIII. Should the Commission consider whether there is a need for the Turning Point project outside of the state, given that the solar renewable energy credits (SRECs) generated from the project may be used in meeting the RPS in other states and that SRECs generated from facilities outside the state may be used to meet Ohio's RPS?**

Looking to the potential demand of SRECs outside Ohio is quite complicated. It would require the same sort of analysis described in the answer to Question V to be done for each state that has a RPS. Further it would require a determination as to whether such SRECs would be allowed to be used to meet the shortfalls (if any) in those other states. Additionally it would require estimations of both the cost of production for the Turning Point SRECs and the prices that SRECs might support in whatever other states are found to have a shortfall. None of this information is available in the record as it currently stands. This utter lack of relevant information allows the Commission to avoid address-

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<sup>13</sup>

R.C. 4935.04(F)(6).

ing the ultimate question of whether the ratepayers of AEP should be in the business of producing a product solely for use outside Ohio.

## **CONCLUSION**

In sum, there is a statewide requirement for in-state solar RECs. The record shows the possibility of a statewide shortage. The Turning Point project is the only plan presently before the Commission which would address this shortage. On the basis of this record evidence, the Turning Point project is needed and the Commission should so find as a matter of fact.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Brief in Response to September 5, 2012 Order 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 3<sup>rd</sup> day of October, 2012.

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