

**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.)	

**COMMISSION-REQUESTED SUPPLEMENTAL BRIEF OF
OHIO POWER COMPANY**

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I. INTRODUCTION

The only issue the Public Utilities Commission of Ohio (“Commission”) must decide in this case is whether there is a need for the Turning Point facility. In evaluating the need for Turning Point, the Commission should consider factors beyond just energy and capacity. The state’s overall energy policy and the facility’s role in furthering that policy are additional factors the Commission should consider. The evidentiary record in this case, in particular the resource plan submitted by Ohio Power Company (“AEP Ohio” or the “Company”) as part of its 2010 Long-Term Forecast Report (“LTFR”) and the testimony of Staff and the Company, demonstrates an imminent need for additional in-state solar generating resources such as Turning Point. Arguments attempting to expand the scope of this proceeding beyond the narrow issue of determining need for Turning Point should be dismissed as out of place and premature. The intervenors, and the Commission, will have the opportunity in another case to fully vet whether AEP Ohio has satisfied the remaining statutory requirements before any costs associated with the

Turning Point facility are recovered. This case is about need--nothing more, nothing less. Today, Turning Point is the only known planned facility with sufficient capacity to satisfy the imminent need for additional in-state solar generating resources. As the state body charged with overseeing the utility industry, the Commission should recognize this fact and refuse to take a wait-and-hope approach to solving this problem. The Commission should adopt the Stipulation and Recommendation offered in this case.

In its September 5, 2012 entry, the Commission reopened these proceedings for the purpose of permitting additional briefing on issues surrounding the determination of need. AEP Ohio submits this brief in response to the Commission's request.

II. ARGUMENT

a. The Commission's Evaluation Of The Need For Turning Point Should Include Consideration Of Factors Beyond Just Energy and Capacity, The State's Overall Energy Policy And The Facility's Role In Enabling Compliance With In-State Renewable Portfolio Standards Are Other Factors The Commission Should Consider.

The Commission's determination of whether Turning Point is needed should include consideration of factors beyond just the need for the facility's energy and capacity—the facility's role in meeting the statutory policy to encourage the development of in-state renewable resources should also be considered. Section 4928.143(B)(2)(c), Revised Code, states, in pertinent part, that “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.”¹ How need is defined for purposes of that code section and how the Commission should properly determine need are not necessarily clear from the language of the statute. However, the

¹ Ohio Rev. Code Ann. § 4928.143(B)(2)(c).

section's usage of the phrase "based on resource planning projections submitted by the electric distribution utility" provides guidance in answering these questions, and shows that a simplistic view considering only energy and capacity under-represents the Commission's oversight and a utility's duty with respect to resource planning.

Ohio law and the Commission's rules governing resource planning require a utility to analyze factors beyond just energy and capacity when preparing a resource plan. For example, rule 4901:5-5-06, Ohio Administrative Code, sets forth the necessary contents of the resource plan required to be included as part of an electric utility's LTFR. Section (A)(1) of the rule states that a resource plan shall include a discussion and analysis of:

Anticipated technological changes which may be expected to influence the reporting person's generation mix, use of energy efficiency and peak-demand reduction programs, availability of fuels, type of generation, use of alternative energy resources pursuant to section 4928.64 of the Revised Code or techniques used to store energy for peak use.²

Further, section (A)(2) of the rule requires an analysis of "[t]he availability and potential development of alternative energy resources pursuant to section 4928.64 of the Revised Code for generating electricity."³ Evaluation and analysis of the generation mix and use of alternative energy resources are required components of a utility's resource plan. Moreover, after the hearing on a utility's LTFR, the Commission is required to determine if the report completely and accurately represents "[a]ll information relating to current activities, facilities agreements, *and published energy policies of the state*. . . ."⁴

² Ohio Admin. Code rule 4901:5-5-06(A)(1).

³ Ohio Admin. Code rule 4901:5-5-06(A)(2).

⁴ Ohio Rev. Code Ann. §4935.04(F) (emphasis added).

The AEP East 2010 Integrated Resource Plan, a plan that was filed with the Commission pursuant to its rules governing resource planning and included in the Company's 2010 LTFR, also states that consideration of factors beyond just energy and capacity is a goal of resource planning:

The goal of resource planning for a largely regulated utility such as AEP is to cost-effectively match its energy supply needs with projected customer demand. As such the plan lays out the **amount, timing** and **type** of resources that achieve this goal at the lowest reasonable cost, considering all the various constraints—reserve margins, emission limitations, renewable and energy efficiency requirements—that are currently mandated or projected to be mandated.⁵

Indeed, the AEP East 2010 Integrated Resource Plan included consideration of items beyond load expectations and the need for additional traditional generation. Embedded in the plan is an analysis of the need for renewable generation resources and consideration of RPS benchmark requirements.

The position that resource planning, and therefore the basis for the Commission's determination of need, is limited to peak load obligation planning produces an incomplete view of resource planning under Ohio law and the Commission's rules. As the Commission's rules and AEP Ohio's resource planning goals reflect, resource planning is far more than only load forecasting. A utility like AEP Ohio must plan for the future anticipating the myriad, complex issues facing a regulated utility. To do otherwise would be to blatantly ignore statutorily-mandated requirements like RPS benchmarks and other environmental compliance requirements. Given that Ohio law and the Commission's rules expressly require a utility to consider factors beyond just energy and capacity when

⁵ AEP Ex. 1 (Castle Direct), Exhibit WKC-2, 2010 LTFR Supplement, Supplemental Appendix 2, Executive Summary at 1 (emphasis in original).

preparing a resource plan and LTFR, any argument to the contrary is easily dismissed as myopic and irresponsible, if not imprudent.

Once it is clear that the Commission's determination of need for purposes of R.C. § 4928.143(B)(2)(c) must include consideration factors beyond just the need for energy and capacity, the question then becomes what evidence is relevant to the Commission's evaluation and what is the proper legal standard to apply to the Commission's analysis. As to the question of what evidence is relevant, certainly information related to the state's total electric load requirements, the state's RPS benchmarks, and available generation capacity is relevant. In addition, R.C. § 4935.05(H) discusses the usage of the record from an LTFR proceeding, providing examples of future proceedings in which it will be considered evidence and adding, "[t]he forecast findings also shall serve as the basis for all other energy planning and development activities of the state government where electric and gas data are required."⁶ As to the proper legal standard to be applied to the Commission's analysis of need, it is appropriate that the Commission's analysis be reasonable in light of the evidence and demonstrable alternatives.

Resource planning consists of much more than just load forecasting. Because R.C. § 4928.143(B)(2)(c) calls for the determination of need based on the utility's resource planning projections and Ohio law and the Commission's rules require a utility's resource plan to analyze and consider a factors beyond just energy and capacity, including the energy policies of the state, the need for renewable generation resources, and future compliance with statutorily-mandated benchmarks, it follows that the Commission's determination of need must also include consideration of factors beyond just energy and capacity. The Commission's determination of need for the Turning Point facility should

⁶ Ohio Rev. Code Ann. § 4935.04(H).

include consideration of the facility's overall impact on the state's energy policy and its role in enabling compliance with in-state RPS solar benchmarks. In creating the resource plan required to be included as part of its 2010 LTFR, AEP Ohio considered these factors and concluded that Turning Point is needed to satisfy the imminent need for additional in-state solar generating resources. The record evidence clearly supports this conclusion.⁷

b. The Commission Should Take A Statewide Approach To Evaluating The Need For Turning Point.

The Commission should take a statewide approach to evaluating the need for additional in-state solar generation such as Turning Point. Several statutes support this conclusion. Those statutes include R.C. sections 4935.04, 4928.64, and 4928.02. In addition, the basic provider of last resort responsibilities of an electric distribution utility also support the Commission taking a statewide approach when evaluating need.

Revised Code § 4935.04 supports the conclusion that the Commission should take a statewide approach to evaluating the need for Turning Point. Subsection (F) of that statute sets forth the findings required to be made by the Commission after a hearing on a utility's LTFR, including a finding that "[t]he report considers plans for expansion of the regional power grid *and the planned facilities of other utilities in the state.* . . ."⁸ Since a utility's LTFR must include consideration of the planned facilities and needs of other utilities in the state, it follows that the Commission, relying on a utility's resource plan in evaluating the need for additional generation facilities, should also take into consideration the statewide need of all industry participants when determining need for purposes of R.C. § 4928.143(B)(2)(c).

⁷ Staff Ex. 1 (Bellamy Direct) at 3-4; AEP Ex. 1 at 6-11; Tr. at, 119, 137 and 139-140.

⁸ Ohio Rev. Code Ann. § 4935.04(F)(6) (emphasis added).

The statewide approach also satisfies the policy objectives for the Commission outlined in R.C. §4928.02. Specifically, subsection (J) encourages incentivizing technologies that can adapt successfully to potential environmental mandates. While at the same time, subsection (N) focuses on the actions taken by the Commission that will “facilitate the state’s effectiveness in the global economy.”⁹ Finding the need to build a large solar renewable project such as Turning Point within the borders of Ohio spurs other economic development in the southeast area of the state, allows the state to compete in a global market, and provides incentives for technology that can adapt to environmental mandates now and in the future. For proof, the Commission can look at its own docket and see the University of Toledo Innovation Enterprise Corporation’s (“UTIE”) request for intervention in this case. As stated by UTIE, their mission is to “drive the transition of northwest Ohio from the glass capital of the world to the solar capital of the world.”¹⁰ UTIE sees the finding of need for the Turning Point facility as important to that goal. By recognizing a need for the Turning Point facility, the Commission would be placing Ohio at the center of the solar equipment supply chain and in doing so would be facilitating the state’s effectiveness in the global economy.

Revised Code § 4928.64 also supports the statewide approach and oversight by the Commission. The statute makes clear that the renewable benchmark requirements apply to all electric distribution utilities and electric services companies in the state. In addition, the statute expressly requires at least half of the renewable energy resources implemented by a utility or company to be located within the state.¹¹ Because every EDU and electric services company in Ohio must meet the RPS benchmarks set forth in R.C.

⁹ Ohio Rev. Code Ann. § 4928.02(N).

¹⁰ See UTIE’s Sept. 14, 2012 Motion to Intervene at 2 (internal quotations omitted).

¹¹ Ohio Rev. Code Ann. § 4928.64(B)(3).

§4928.64, the Commission should consider the statewide need of all industry participants in evaluating whether there is a need for additional in-state solar generation such as the Turning Point facility.

Lastly, an electric distribution utility's provider of last resort obligation also supports the position that the Commission should take a statewide approach in evaluating the need for additional in-state generating facilities. AEP Ohio must stand ready to serve as the provider of last resort for any customers who return to receiving standard services from the utility, meaning AEP Ohio is still at risk of having to meet the increased RPS benchmarks associated with supplying generation to returning customers. To plan for this risk, as AEP witness Castle pointed out at the hearing, "[i]t's more instructive to know what is the total solar capacity in the state at a given time. If there's enough capacity in the state, then we know that there will be perhaps a viable REC market, and if there isn't, there won't be."¹² A regulator's prudent oversight and the General Assembly's direction require a statewide approach that looks beyond the needs of individual utilities when evaluating the need for additional in-state renewable generating facilities. A statewide approach is consistent with statutory requirements and the Commission's rules governing resource planning.

Looking to the availability of solar resources outside the state goes beyond the general jurisdiction of the Commission, which is provided its authority from the General Assembly in Ohio. While nothing may bar the Commission from taking into consideration the national or regional regulatory environment, it would strain the Commission's jurisdiction to consider whether there is a need for Turning Point outside

¹² Tr. at 49-50.

of the state. But the entire state of Ohio is squarely under the purview of the Commission's oversight.

The record demonstrates that additional in-state solar generation is needed in the imminent future and that Turning Point addresses this need. Both AEP Ohio witness Castle and Staff witness Bellamy looked at the certified in-state solar resources available currently to meet the state's RPS benchmarks and concluded that insufficient resources exist at this time.¹³ After updating his analysis for 2012, Mr. Castle testified that while the need for additional in-state solar resources had shifted from 2012 to 2015, a need existed nonetheless.¹⁴ Mr. Bellamy testified that "[e]ven with the addition of 49.9 MW Turning Point solar facility, it is very likely that additional in-state and out-of-state solar capacity will need to be constructed."¹⁵ During cross examination, Mr. Bellamy came to a similar conclusion as Mr. Castle regarding when the currently-available in-state solar resources would be insufficient to meet the statewide need: "[a]ll we know is what's actually built right now. And based on what's built right now we run out of compliance needs in just a couple of years."¹⁶

Staff's point of view, to assess where we actually are versus where we may be someday, fits its position as Staff of the Commission entrusted with the oversight of the utility industry in Ohio and the duty to carry out the General Assembly's direction. Staff agrees that it is not prudent to wait and see if projects develop outside of the Commission's involvement to address the General Assembly's direction.¹⁷ The entire exercise of resource planning would not be necessary if the Commission's policy were to

¹³ Staff Ex. 1 at 3-4; AEP Ex. 1 at 6-11; Tr. at 119, 137 and 139-140.

¹⁴ AEP Ex. 1 at 10.

¹⁵ Staff Ex. at 9.

¹⁶ Tr. at 119 and 139-140.

¹⁷ Tr. at 144; Staff Initial Brief at 6-7.

hope that someone else comes in and gets the job done. Utilities file forward looking resource plans that the Commission considers. That cannot be a vain act. To give the plans purpose and the Commission a role in resource planning cases that have the Commission determining need are important and purposeful.

In evaluating whether there is a need for Turning Point, the Commission should look beyond just the needs of individual utilities and should take a statewide approach to evaluating the need for additional solar generating facilities in Ohio. Looking only to the needs of individual utilities or electric service companies will produce an incomplete view of the availability of in-state solar capacity and viability of the solar REC market, and may, therefore, ultimately lead to chronic noncompliance with the state's RPS benchmarks and/or higher REC prices. As discussed above, a statewide approach to evaluating the need for Turning Point is supported by statute, consistent with the Commission's rules governing resource planning, and mirrors the approach already taken by utilities like AEP Ohio when developing their resource plans. The record demonstrates a statewide need for additional in-state solar resources to support the state's RPS solar benchmark requirements and the Commission should recognize this need.

c. In The Alternative, If The Commission Decides To Only Consider The Short Term Needs Of AEP Ohio When Evaluating the Need for Turning Point, The Commission Should Still Find That AEP Ohio Has Demonstrated A Need For The Facility.

Even when only considering the individual needs of AEP Ohio, the record evidence shows that Turning Point is still needed. AEP Ohio witness Castle testified that "AEP Ohio currently has the capacity to produce 15.1 GWh of solar energy annually, all

of it in-state.”¹⁸ But in 2013, AEP Ohio’s in-state RPS solar benchmark requirement is projected to be more than 18 GWh.¹⁹ Thus, in the absence of additional in-state solar resources there will be insufficient in-state solar RECs in existence and AEP Ohio will be deficit beginning in 2013. Even with the addition of the first phase of the Turning Point facility, the start of which has now been delayed until at least 2014 as discussed further below, AEP Ohio’s in-state RPS solar benchmark requirements are only satisfied through 2020.²⁰ Without the addition of significant in-state solar generation in the near future, there will simply not be enough solar capacity for AEP Ohio to meet its future RPS solar benchmark requirements.

The intervenors argue that AEP Ohio does not need the Turning Point facility, pointing to increased shopping levels in the Company’s service territory²¹ or to the possibility that AEP Ohio could be exempt from complying with future RPS benchmarks.²² However, as discussed above AEP Ohio must stand ready as the provider of last resort for those once-shopping customers who return to receiving electric services from the Company. Therefore, even if AEP Ohio has sufficient solar RECs to meet its RPS solar benchmark requirements based on its SSO load today, it is unknown what the level of shopping will be in AEP Ohio’s service territory over the next thirteen years as the Company plans for RPS compliance through the year 2025. In fact, it would seem logical that any effective solar REC market would need more supply than demand to ensure supply could satisfy demand at a reasonable cost to customers. Even entities that have in-state solar RECs can sell them out of state, making less available for those in

¹⁸ AEP Ex. 1 at 6.

¹⁹ AEP Ex. 1, Exhibit WKC-2, 2010 LTFR Supplement, Supplemental Appendix 1, Exhibit 4.

²⁰ AEP Ex. 1, Exhibit WKC-2, 2010 LTFR Supplement at 11.

²¹ FES Exhibit 1 (Lesser Direct) at 12-13; IEU-Ohio Initial Brief at 14-15.

²² FES Initial Brief at 13.

need. Lastly, a policy where AEP Ohio forgoes securing in-state solar capacity in hopes that it will be exempt from future RPS solar benchmark requirements is an untenable and imprudent approach. AEP Ohio seeks to comply with the law; it is not exploring options to not comply. The record evidence supports AEP Ohio's imminent need for additional in-state solar resources in order to support compliance with the state's RPS solar benchmark requirements.

Given the delays associated with this and other related cases, the currently projected in-service date of Phase 1 (20MW) of the Turning Point project has been pushed back until the first or second quarter of 2014. This delay only highlights the imminent need for additional in-state solar resources sufficient to support compliance with the state's RPS solar benchmark requirements. In the absence of such resources, there will simply not be enough in-state solar RECs in existence and AEP Ohio will be deficit beginning in 2013. The Commission should recognize this fact and should find that AEP Ohio has demonstrated a need for the Turning Point facility.

III. CONCLUSION

The Commission should reject attempts by the intervenors in this case to limit the Commission's broad oversight in the area of resource planning. In evaluating the need for Turning Point, the Commission should consider factors beyond just energy and capacity, recognizing that resource planning is more than just load forecasting. It includes an analysis of myriad issues, including compliance with statutorily-mandated RPS benchmarks and the overall consideration of the state's energy policies. Further, consistent with the Commission's rules governing resource planning and Ohio law, the Commission should take a statewide approach in evaluating the need for Turning Point

because all electric distribution utilities and electric service companies in Ohio are required to comply with the state's RPS benchmarks. In the alternative, if the Commission chooses to consider only AEP Ohio's individual needs for additional in-state solar resources, the Commission should still find that AEP Ohio has demonstrated a need for the Turning Point facility based on the resource planning projections it submitted to the Commission in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the below-named counsel via electronic mail this 3rd day of October, 2012.

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