

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 and)	Case No. 10-502-EL-FOR
Related Matters)	

POST-HEARING REPLY BRIEF OF THE UNIVERSITY OF TOLEDO
INNOVATION ENTERPRISES REGARDING TURNING POINT SOLAR

I. Introduction

This case is about establishing whether there is a need for the 49.9 MW Turning Point Solar Project. As previously explained, the Commission has broad authority to consider need in an expansive manner. (UTIE brief at pp. 2-6.)

Based on the testimony and briefs presented by Staff and AEP, the need for TPS is clear and threefold: (1) the statutory requirement that AEP comply with the solar benchmarks in Ohio’s renewable portfolio standard; (2) the absence of sufficient in-state and out-of-state SRECs necessary to satisfy the statewide need for SRECs; and (3) the considerations set forth in R.C. 4935.01. Rather than dealing directly with these issues, FES attempts to distract the Commission with questions concerning cost, which are irrelevant at this point, and tries to portray Ohio’s SREC market as a properly functioning system, which it is not. In fact, the market has been subject to extreme volatility as a result of utilities constructing artificial barriers to marketplace maturation.

As more fully explained below, the Commission has ample grounds to find that a need exists for TPS.

II. The Commission Has Clear Authority to Find Need for Turning Point Solar

Pursuant to R.C. 4928.64, 4928.143 and 4935.01, the Commission is charged with enforcement of the RPS, while considering the realities of the statewide and regional SREC marketplace and the future of Ohio's generation resource portfolio and its contributions to overall statewide vitality. The Commission must also consider the long-term energy, capacity, economic and environmental needs of Ohio's generation resource mix. TPS addresses these needs, and it is unrefuted that TPS is the only large scale solar project ready for construction.

FES disregards these statutory provisions and argues that the Commission should consider only reliability in determining need. There are two problems with FES' position. It has no basis in law, and it overlooks the Commission's broader responsibilities. FES also tries to distract the Commission with questions concerning cost. Cost, however, is to be dealt with in a separate proceeding that is yet to take place. As Examiner Parrot has already made clear, "It's not the Commission's intention to address cost recovery at this point." (Trans. from hearing on Mar. 28, 2012, at pp. 168-169.)

III. The Commission Should Consider the Need for TPS on a Statewide Basis and Consider the Availability of In-state and Out-of-state SREC Resources

There will soon be insufficient out-of-state SRECs available to meet the benchmarks in R.C. 4928.64(B)(3), and the situation may get worse. (UTIE brief at pp. 9-10.) As Mr. Bellamy testified, the only plan now in place to remedy the situation is the construction of TPS. While there may be talk of other solutions, "You can't meet the mandates on what might be built." (Cross-exam. of Bellamy, Mar. 28, 2012, at p. 139.)

Unconcerned about reality, FES tries to portray the SREC market as a functioning system (FES supp. brief at p. 3), but this characterization does not match the reality of Ohio's SREC

marketplace. Staff's testimony and past utility *force majeure* filings evidence that Ohio's SREC market is immature and dysfunctional and suffers from a lack of investor confidence.

FES is writing fiction when it states that there is a robust and functional marketplace for SRECs. To support this fiction, FES conflates the terms "SREC" and "solar resources" so as to blur their distinction in the context of *force majeure* determinations and glosses over the need for TPS. According to FES, *force majeure* may be invoked "in the event the cost of compliance with these benchmarks is too high or solar RECs are not available in the competitive market." (FES supp. brief at p. 15, emphasis added.) This is simply not true and demonstrates a fundamental misunderstanding of the state solar market and the policies underpinning its development and, in turn, the need for TPS.

First, *force majeure* is not available "in the event the cost of compliance *** is too high." Costs are addressed by the statute's cost cap provisions and alternative compliance payments. Second, pursuant to R.C. 4928.64(C), the Commission can invoke *force majeure* when "solar energy resources are not reasonably available" to permit a utility to comply with the benchmarks. In this context, "resources" refers to such item as panels, racking systems, inverters, and the raw materials required to build a system. If there is a shortage of these resources, *force majeure* is available because it would be unreasonable to require utilities to source materials that do not exist or to pay compliance costs for failing to achieve the impossible.

On the other hand, and contrary to FES's assertion, when solar energy resources are readily available, but the Ohio or regional market is merely short of SRECs, the Commission should not invoke *force majeure* because the unavailability of SRECs is attributable to factors wholly unrelated to the availability of solar resources. For example, the SREC shortage may be due to the utility's failure to issue financeable RFPs (i.e., the issuance of only short-term RFPs

for spot market SRECs), or because a utility issued an RFP that is impossible to meet, such as the issuance of an RFP for 2012 SRECs in October of 2012, when less than 90 days remained in the year to finance and construct a project. (See FirstEnergy news release, *FirstEnergy Ohio Utilities Launch Request for Proposal for 2012 Solar and Renewable Energy Credits*.)¹ These types of actual events have destabilized the SREC market and contribute to the need for TPS.

Such efforts to game the system create purely artificial SREC shortages that drive up costs for ratepayers and, unless remedied, will cause SREC shortfalls in the near term, as described by staff witness Bellamy. (Trans. from hearing, Mar. 28, 2012, at p. 113.) The gaming of the market also explains why there is no merit to FES's proposition that the SREC marketplace "gives private developers confidence that their projects will find buyers." (FES supp. brief at p. 3.)

In fact, if the marketplace were operating as well as FES suggests, this Commission may not have had cause to order a management audit of FirstEnergy's compliance with Ohio's RPS. The audit revealed that FirstEnergy evidently paid FES for RECs in amounts up to 15 times what it would have paid in alternative compliance payments, sums far greater than what any other utility in the country paid for RECs. (Final management/performance audit of FirstEnergy Ohio, performed by Exeter Associates, filed Aug. 15, 2012, in case no. 11-5201-EL-EDR, at p. 28.)

The State of Ohio needs TPS in order to provide long term stability for the SREC market and avoid the type of market manipulation that can result in "economic rents" (Final audit, referred to above, at pp. iv, 31 and 33), i.e., windfall profits at the expense of ratepayers. It is not surprising the apparent beneficiary of those windfall profits is now opposing the need for TPS.

¹See https://www.firstenergycorp.com/content/fecorp/newsroom/news_releases/firstenergy-ohio-utilities-launch-request-for-proposal-for-2012-.html (retrieved 10/17/2012).

All these factors are both relevant and very important in determining need. The Commission should consider these market dynamics and the artificial barriers that impede utilities from reaching the benchmarks at prudently incurred costs, while concurrently determining the need for new generation.

IV. Conclusion

Based on statutory authority, this Commission is authorized to find a need for the 49.9 MW Turning Point Solar project and, in doing so, should consider more than just issues of reliability, energy and capacity. This Commission's determination should encompass considerations such as solar benchmark compliance and the statewide need for SRECs. It is reasonable and necessary for the Commission to consider the realities of the in-state and out-of-state SREC marketplaces, including how the marketplace has been influenced to date and how the Commission can assist its stabilization.

Turning Point Solar will provide an important energy resource to Ohio, help AEP comply with its solar benchmarks, and help fill a statewide need for in-state and out-of-state SRECs. In addition to stabilizing the marketplace, Turning Point will produce enormous economic and environmental benefits that, under the long-term forecasting requirements of the law, should be important additional considerations for the Commission.

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Summary: Reply Post-Hearing Reply Brief of the University of Toledo Innovation Enterprises Regarding Turning Point Solar electronically filed by Jack D'Aurora on behalf of University of Toledo Innovation Enterprises Corporation