

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Alternative Energy)
Resources Report for Calendar Year 2010)
From Constellation NewEnergy, Inc.)**

Case No. 11-2448-EL-ACP

Findings and Recommendations of the PUCO Staff

I. Statutory Background

Senate Bill 221, with an effective date of July 31, 2008, established Ohio's alternative energy portfolio standard (AEPS) applicable to electric distribution utilities and electric service companies. The AEPS is addressed principally in sections 4928.64 and 4928.65, Ohio Revised Code (ORC), with relevant resource definitions contained within 4928.01(A), ORC.

According to 4928.64(B)(2), ORC, the specific compliance obligations for **2010** are as follows:

- Renewable Energy Resources = 0.50% (includes solar requirement)
- Solar Energy Resources = 0.010%

In addition, there is a requirement that at least half of the renewable energy resources, including the solar energy resources, shall be met through facilities located in this state.

The PUCO further developed rules to implement the Ohio AEPS, with those rules contained within Ohio Administrative Code (OAC) 4901:1-40.

4901:1-40-05(A), OAC:

Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, an annual alternative energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks and planning requirements have or will be met. Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.

4901:1-40-05(C), OAC:

Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.

The findings and recommendations in this document pertain to the company's compliance status. This document does not address such matters as cost recovery or status relative to the statutory 3% cost provision.

II. Company Filing Summarized

Constellation NewEnergy, Inc. (Constellation) filed both a redacted and confidential version of its annual AEPS compliance status report for 2010. In addition, Constellation filed a motion for protective order in this proceeding that the Commission granted in part and denied in part.¹

The Company proposed a baseline of 309,231 megawatt-hours (MWHs) that it indicated was the average of its annual Ohio retail electric sales for 2007, 2008, and 2009. With its proposed baseline and the 2010 statutory benchmarks, Constellation computed its 2010 compliance obligations to be the following:

- 1,546 Non-Solar MWHs, of which at least 773 must originate from Ohio facilities
- 31 Solar MWHs, of which at least 16 must originate from Ohio facilities

To these compliance obligations, Constellation added its solar deficiency from 2009 that was addressed in a prior Commission decision granting its *force majeure* request for 2009.²

Constellation asserted in its annual status report that it had satisfied its 2010 compliance obligations, including the solar shortfall from the previous year, and that it had retired the necessary number of renewable energy credits (RECs) and solar RECs (S-RECs) to demonstrate compliance.³

¹ Entry (8/30/12)

² Finding and Order in Case No. 10-0428-EL-ACP (4/28/10)

³ Annual status report, p. 2

III. Filed Comments

No persons filed comments in this proceeding.

IV. Staff Findings

Following its review of the annual status report and any timely comments submitted in this proceeding, Staff makes the following findings:

- (1) That Constellation is an electric services company in Ohio with retail electric sales in 2010, and thus Constellation has an AEPS compliance obligation for 2010.
- (2) That Constellation filed its annual AEPS compliance status report for the 2010 compliance year on April 14, 2011.
- (3) That the baseline proposed by Constellation is reasonable.
- (4) That Constellation properly computed its solar obligation for 2010, but overstated its non-solar⁴ renewable obligation. Constellation's calculations assume a non-solar renewable requirement of 0.50% of its baseline, while Staff finds that the appropriate number to apply should be 0.49%.⁵ Using its methodology, Staff calculates a non-solar obligation of 1,515 RECs⁶ of which at least 758 must originate from Ohio sources.
- (5) That Constellation's reserve subaccount data on the PJM EIS Generation Attribute Tracking System (GATS) showed that it had retired RECs and S-RECs to meet its 2010 compliance requirements.
- (6) That Constellation retired more RECs and S-RECs than was necessary to demonstrate compliance with its 2010 APES obligations. When added to the 15 excess Ohio non-solar RECs that it retired in 2009, Constellation has retired the following quantities in excess of their compliance obligations thru 2010:
 - 137 Ohio Non-Solar RECs
 - 122 Non-Ohio Non-Solar RECs

⁴ Staff uses "non-solar" in this context to refer to the total renewable energy requirement net of the specific solar requirement. Staff acknowledges that there is not a specific "non-solar" requirement in the applicable statute.

⁵ 0.50% netted against the solar requirement of 0.01%

⁶ 0.49% * 309,231 MWHs

- 2 Ohio S-RECs
 - 2 Non-Ohio S-RECs
- (7) That following a review of Constellation's reserve subaccount data on GATS, Staff confirmed that Constellation satisfied its total non-solar obligation, as well as the specific minimum in-state non-solar requirement, for 2010. The RECs that Constellation has transferred to its GATS reserve subaccount were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2010.
- (8) That following a review of Constellation's reserve subaccount data on GATS, Staff confirmed that Constellation satisfied its total solar obligation, as well as the specific minimum in-state solar requirement, for 2010. In addition, the reserve subaccount data indicated that Constellation's 2009 solar shortfall was fully addressed. The S-RECs that Constellation has transferred to its GATS reserve subaccount were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2010.

V. Staff Recommendations

Following its review of the information submitted in this proceeding and other relevant data, Staff recommends the following:

- (1) That Constellation be found in compliance with its 2010 AEPS compliance obligations, including its solar shortfall from 2009.
- (2) That the excess RECs and S-RECs identified above in Finding 6 be eligible to be applied against an applicable future compliance obligation of Constellation, provided that the timing of this usage does not conflict with 4901:1-40-04(D)(3), OAC.
- (3) That for future compliance years in which Constellation is utilizing GATS to demonstrate its Ohio compliance efforts, Constellation initiate the transfer of the appropriate RECs and S-RECs to its GATS reserve subaccount between March 1st and April 15th so as to precede the filing of its Ohio annual compliance status report with the Commission.

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Summary: Staff Review and Recommendation electronically filed by Mr. Stuart M Siegfried on behalf of PUCO Staff