

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)	
of its Rules for the Alternative Energy)	
Portfolio Standard Contained in Chapter)	Case No. 13-652-EL-ORD
4901:1-40 of the Ohio Administrative)	
Code.)	

COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

Pursuant to the Commission's July 11, 2014 Entry ("Entry"), FirstEnergy Solutions Corp. ("FES") hereby submits the following comments regarding revisions to be made to Ohio Administrative Code (OAC) 4901:1-40-03 as result of the amendments made to Ohio Revised Code (ORC) 4928.64(B)(3) by Substitute Senate Bill 310 (Sub.S.B. 310). For the reasons stated below, the amendments made to ORC 4928.64(B)(3) by Sub.SB. 310 require the Commission to amend OAC 4901:1-40-03 to completely eliminate the requirement that half the resources used by electric distribution utilities (EDUs) and electric service companies (ESCs) to comply with renewable energy mandates be from within the state of Ohio for all of compliance year 2014.

Sub.S.B. 310 removed the prior requirement from ORC 4928.64(B)(3) that half of the renewable energy resources implemented by an EDU or ESC be met through in-state resources. The plain language of the amendment mandates that the renewable energy resources implemented shall be met through "facilities located in this state; *or with resources that can be shown to be deliverable into this state.*"¹ There is nothing in the amendments to ORC

¹ Ohio Revised Code - 4928.64 [Effective 9/12/2014].

4928.64(B)(3) to indicate that the intent of the legislature was to pro-rate the existing requirement for a portion of compliance year 2014. The Commission, as a creature of statute, may exercise only that jurisdiction conferred upon it by statute.² The amendments in ORC 4928.64(B)(3) are effective as of September 12, 2014, and thus for compliance year 2014. Thus, any amendments made to OAC 4901:1-40-03 should mirror those made in ORC 4928.64(B)(3) and eliminate the in-state requirement in its entirety and without qualification. Failure to eliminate the in-state requirement and amending OAC 4901:1-40-03 to require a portion of renewable resources to be provided from in-state facilities is in direct contradiction to the empowering statute passed by the legislature.

The amendments made to 4928.64(B)(3) set forth a clear mandate that the generating resources used for compliance merely be “deliverable” into Ohio, without limiting it to those generated within the state.³ If the legislature had any intent on holding over the in-state requirement for any portion of compliance year 2014, the amendments to ORC 4928.64(B)(3) would reflect that intent. They simply do not. To subsequently amend OAC 4901:1-40-03 in such a manner would then conflict with the clear meaning of the ORC amendments.

There is no benefit for EDUs, ESCs, the Commission, and ultimately the customers, in delaying full implementation of ORC 4928.64(B)(3) until compliance year 2015. The intent of the legislature in passing Sub.S.B. 310 was to enact immediate change to Ohio’s alternative energy portfolio standards, which were viewed by the legislature as “unrealistic and unattainable.”⁴ For instance, Sub.S.B. 310 also provides that EDUs and ESCs should have the ability to choose their compliance-year baseline for renewable energy requirements “beginning

² *Canton Storage and Transfer Co. v. Pub. Util. Comm.* 72 Ohio St. 3d 1, 5 (1995).

³ *Id.*

⁴ Bill Analysis, Ohio Legislative Service Commission, As Reported by House Committee. Page 21.

with compliance year 2014.”⁵ The reforms the legislature contemplated are most beneficial to all market participants the sooner they can be implemented.

In the Ohio Legislative Service Commission’s Bill Analysis on Sub.S.B. 310 and the particular impacts relating to the deliverability of renewable energy resources, the legislature stated clearly, and without qualification:

“The bill eliminates the requirement in current law that at least one-half of the renewable energy resources that an EDU or an ESC implements to meet the renewable energy resource benchmarks must be met through facilities located in Ohio and that the remainder must be met with resources that can be shown to be deliverable into Ohio. Instead, the bill permits the renewable energy resources implemented to meet the benchmarks be met through facilities located in Ohio or with resources that can be shown to be deliverable into Ohio.”⁶

There are no indications in the legislature’s analysis that the elimination of the in-state generating resource requirement remain applicable for any portion of compliance year 2014. Rather, they unequivocally state that the bill “eliminates” the requirement, and “permits” meeting the benchmarks through any resources shown to be deliverable into Ohio.

The intentions of the General Assembly in enacting Sub.S.B. 310 were numerous, but included ensuring Ohio customers have access to affordable energy, incorporating of as many forms of inexpensive, reliable energy sources in Ohio as possible, and reviewing all energy resources to address energy pricing issues because the current laws “may be unrealistic and

⁵ Bill Analysis, Ohio Legislative Service Commission, As Reported by House Committee. Page 10.

⁶ Bill Analysis, Ohio Legislative Service Commission, As Reported by House Committee Page 8.

unattainable.”⁷ The amendments to OAC 4901:1-40-03 should reflect that same intent. Eliminating the in-state requirements in their entirety, effective for compliance year 2014, immediately expands the market options for EDUs and ESCs to meet the renewable energy standards. Benefits reaped by EDUs and ESCs in having a larger pool of resources to choose from would ultimately get passed on to the customer. To continue enforcing the in-state requirement for a majority of compliance year 2014 on a pro-rata basis is counter to the plain language and intent of the legislature. Even if the in-state requirement is eliminated for all of 2014, nothing prevents EDUs or ESCs from using in-state RECs for 2014 compliance purposes. Allowing for an immediate expansion of the market place provides more options and more potential benefits for Ohio customers.

For the reasons stated above, in amending OAC 4901:1-40-03, the Commission should entirely eliminate the requirement that in-state resources be used in implementing renewable energy in 2014 in accordance with Sub.S.B. 310 and ORC 4928.64(B)(3).

Respectfully submitted,

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⁷ Bill Analysis, Ohio Legislative Service Commission, As Reported by House Committee. Page 21.

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Summary: Comments electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp.