



# The 2010 Ohio Innovation Summit

## The Future of the Utility Enterprise

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# Ohio Senate Bill 221

## Alternative Energy Portfolio Standard

Alternative Energy Technologies	2025 R.P.S. Benchmarks	In-State Requirements	Renewable Energy Credits	Enforcement/ Compliance Payments																																																																					
<p><b>Renewable</b> ORC 4928.01(A)(35)</p> <ul style="list-style-type: none"> <li>Solar – Photovoltaic</li> <li>Solar – Thermal</li> <li>Wind</li> <li>Hydropower</li> <li>Certain Solid Waste</li> <li>Biomass</li> <li>Bio-Methane Gas</li> <li>Fuel Cells</li> <li>Wind Turbines – Lake Erie</li> <li>Off Peak Storage Facilities Utilizing Renewables</li> <li>Distributed Generation Facilities Utilizing Renewables</li> </ul>	<p><b>Renewable and Solar Benchmarks: 12.5% +</b> ORC 4928.64(B)(2)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Y</th> <th>R</th> <th>S</th> </tr> </thead> <tbody> <tr><td>2009:</td><td>.25%</td><td>.004%</td></tr> <tr><td>2010:</td><td>.50%</td><td>.010%</td></tr> <tr><td>2011:</td><td>1.0%</td><td>.030%</td></tr> <tr><td>2012:</td><td>1.5%</td><td>.060%</td></tr> <tr><td>2013:</td><td>2.0%</td><td>.090%</td></tr> <tr><td>2014:</td><td>2.5%</td><td>.120%</td></tr> <tr><td>2015:</td><td>3.5%</td><td>.150%</td></tr> <tr><td>2016:</td><td>4.5%</td><td>.180%</td></tr> <tr><td>2017:</td><td>5.5%</td><td>.220%</td></tr> <tr><td>2018:</td><td>6.5%</td><td>.260%</td></tr> <tr><td>2019:</td><td>7.5%</td><td>.300%</td></tr> <tr><td>2020:</td><td>8.5%</td><td>.340%</td></tr> <tr><td>2021:</td><td>9.5%</td><td>.380%</td></tr> <tr><td>2022:</td><td>10.5%</td><td>.420%</td></tr> <tr><td>2023:</td><td>11.5%</td><td>.460%</td></tr> <tr><td>2024:</td><td>12.5%</td><td>.500%</td></tr> </tbody> </table>	Y	R	S	2009:	.25%	.004%	2010:	.50%	.010%	2011:	1.0%	.030%	2012:	1.5%	.060%	2013:	2.0%	.090%	2014:	2.5%	.120%	2015:	3.5%	.150%	2016:	4.5%	.180%	2017:	5.5%	.220%	2018:	6.5%	.260%	2019:	7.5%	.300%	2020:	8.5%	.340%	2021:	9.5%	.380%	2022:	10.5%	.420%	2023:	11.5%	.460%	2024:	12.5%	.500%	<p>At least ½ of renewable energy resources to be implemented by the utilities shall be met through facilities located in Ohio.</p> <p>The remainder shall be met with resources that can be shown to have been delivered into this state. ORC 4928.64(B)(3)</p>	<p>Utilities may use R.E.C.s in any of the 5 calendar years following acquisition to comply with both the renewable and solar energy resource requirements.</p> <p>1 R.E.C. shall equal 1 Mw Hour of electricity from renewable resources. ORC 4928.65</p>	<p><b>1) Annual PUCO Review</b> ORC 4928.64(C)(1)</p> <p><b>2) If Not in Compliance:</b> ORC 4928.64(C)(2)</p> <p>A) Solar Benchmark \$ per Mw hour :</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr><td>2009:</td><td>\$450</td></tr> <tr><td>2010:</td><td>\$400</td></tr> <tr><td>2012:</td><td>\$350</td></tr> <tr><td>2014:</td><td>\$300</td></tr> <tr><td>2016:</td><td>\$250</td></tr> <tr><td>2018:</td><td>\$200</td></tr> <tr><td>2020:</td><td>\$150</td></tr> <tr><td>2022:</td><td>\$100</td></tr> <tr><td>2024:</td><td>\$50</td></tr> </tbody> </table> <p>B) Renewable Benchmark 2009: \$45 Adjusted annually per CPI</p>	2009:	\$450	2010:	\$400	2012:	\$350	2014:	\$300	2016:	\$250	2018:	\$200	2020:	\$150	2022:	\$100	2024:	\$50
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# PUCO Rules Complete

- Workable
- 3% Cost Cap
  - Separate advanced/renewable caps
  - Spread over rate base
  - Build to the benchmarks
  - Catch-up
- Annual in-state requirement (drives up REC value)



# 2009 Utility Compliance

- 1<sup>st</sup> Year of RPS
- Administrative rules not finalized until December '09
- Ratemaking proceedings took center stage



# '09 Results Mixed

- Utilities evidently met “renewable” tier (April reporting period)
- 3 of 4 investor-owned utilities have filed force majeure on solar
- One utility made 9% of the benchmark; others 3%, 68%, ?
- AEP 10 MW Announcement  
DP& L 1.5 MW Announcement



# “Force Majeure”

- Standard: Renewable resources not sufficiently available
- Good Faith Requirement
  - Power and RECs
  - Banking RECs
  - Long-Term Solicitations
- Chicken / Egg: Utilities allege no RECs available; solar industry allege short-term, spot-market RFPs are bogus

# Motion to Oppose Force Majeure

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus )  
Southern Power Company for Amendment of the )  
2009 Solar Energy Resource Benchmark, Pursuant ) Case No. 09-987-EL-EEC  
to O.R.C. Section 4928.64(C)(4). )

In the Matter of the Application of Ohio Power )  
Company for Amendment of the 2009 Solar ) Case No. 09-988-EL-EEC  
Energy Resource Benchmark, Pursuant to O.R.C. )  
Section 4928.64(C)(4). )

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**COMMENTS IN OPPOSITION TO AEP's FORCE MAJEURE APPLICATION  
BY OHIO ADVANCED ENERGY AND VOTE SOLAR ("THE SOLAR INDUSTRY")**

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**I. Facts**

Senate Bill 221: On May 1, 2008, Governor Ted Strickland signed into law a sweeping new energy policy for the state of Ohio, Amended Substitute Senate Bill 221 ("SB 221"). Describing the legislation as "landmark" and "historic," the Governor stated the legislation would "serve as a catalyst to enhance energy industries in Ohio, bringing new jobs while protecting existing jobs" and that the state "will attract the jobs of the future through an advanced energy portfolio standard."<sup>1</sup> The Solar Industry<sup>2</sup>, which advocated aggressively for the advanced energy policy contained in SB 221, believes that the success of this new law will depend upon its implementation and enforcement at the Public Utilities Commission of Ohio ("PUCO").

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<sup>1</sup> Office of the Governor, Press Release, May 1, 2008. Attached as Exhibit A. See: <http://www.governor.ohio.gov/Default.aspx?tabid=622>

<sup>2</sup> The Solar Industry in this case is represented by Ohio Advanced Energy and Vote Solar. OAE is a statewide trade association of advanced energy companies and their supply chain partners that advocates for state advanced energy policy and was active during the SB 221 legislative process. Vote Solar is a national organization advocating policies to help bring about the economies of scale which will drive down the cost of solar energy.



# Force Majeure

- Available Remedies
  - Impose Compliance Payment
  - Order Immediate Issuance of Long-Term RFP
  - Grant Waiver
    - Full waiver
    - Waiver and bump future benchmarks
    - **Defer requirement without bumping future years (double up next year)**



# PUCO Decision

09-987-EL-BEC, et al.

-9-

renewable energy facilities, renewable energy credits, and qualified resources were finalized after AEP-Ohio filed the instant application, a factor which is beyond AEP-Ohio's control. In light of the uncertainty regarding the Commission's compliance requirements this first year of the benchmarks, the good faith efforts AEP-Ohio has made to comply, and given that, as AEP-Ohio requests, any shortfall for 2009 compliance requirements will be added to and included as part of the Companies' compliance requirements for 2010, we find that AEP-Ohio has presented adequate reason for the Commission to grant AEP-Ohio's request to invoke *force majeure* and revise the Companies' 2009 SER benchmarks. Accordingly, we find that AEP-Ohio's application is reasonable and should be granted.

It is, therefore,

ORDERED, That OEG's, ELPC's, OPAE's, OCC's, IEU's, OAE's, OEC's, VSI's and Sierra's motions to intervene be granted. It is, further,

ORDERED, That OPAE's motion to admit David C. Rinebolt to practice *pro hac vice* before the Commission be granted. It is, further,

ORDERED, That AEP-Ohio's request for a *force majeure* waiver of 2009 SER benchmarks be granted and, to the extent that the Companies did not comply with the 2009 SER benchmarks, the 2010 SER benchmarks be increased. It is, further,



Bricker & Eckler  
ATTORNEYS AT LAW



# Taxation: SB 232 and HB 464

- Current Law (Utility TPPT)
  - \$40K/MW wind
  - \$100K + / MW solar
- Bills reduce tax to \$6K-8K/MW
- Jobs requirements
- University partnership (?)
- Prevailing wage(?)
- Exemption for small systems(?)



# Burger Plant: Bonus RECs

- Plant under federal order to close
- Utility announces intention to convert plant from coal to biomass
- RPS amended to grant “bonus RECs” to Burger plant
- Biomass likely displace some wind
  - Solar protected through carve-out
- Other utilities interested (?)



# 2010 Pivotal Year

- Tax challenges take center stage
- Procurement / Force Majeure
- Impact of Burger plant
- **REC market development**



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