

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
FirstEnergy Solutions Corp. for Approval) Case No. 11-1344-EL-ACP
of its 2010 Alternative Energy Annual)
Status Report.)

FINDING AND ORDER

The Commission finds:

- (1) FirstEnergy Solutions Corp. (FES) is an electric services company as defined in Section 4928.01(A)(9), Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric services companies to acquire a portion of their electricity supply for retail customers in Ohio from renewable energy resources. Specifically, the statute requires that, for 2010, a portion of the electricity sold by means of retail electric sales in Ohio must come from alternative energy resources (overall renewable energy resources benchmark), half of which must be met with resources located within Ohio (in-state renewable energy resources benchmark), and including 0.010 percent from solar energy resources (overall solar energy resources (SER) benchmark), half of which must be met with resources located within Ohio (in-state SER benchmark). This requirement increased to 0.030 percent for 2011.
- (3) Rule 4901:1-40-05(A), Ohio Administrative Code (O.A.C.), requires that, unless otherwise ordered by the Commission, each electric services company file by April 15 of each year an annual alternative energy portfolio status report. The report must analyze all activities the company undertook in the previous year in order to demonstrate how pertinent alternative energy portfolio benchmarks and planning requirements have been or will be met. Additionally, Commission Staff must conduct an annual compliance review with regard to the benchmarks. Finally, Rule 4901:1-40-02(A), O.A.C., provides that electric services companies that do not serve Ohio retail electric customers are not required to comply with the terms of the alternative energy portfolio benchmarks.

- (4) On March 18, 2011, FES filed its 2010 alternative energy portfolio status report pursuant to Section 4928.64, Revised Code, and Rule 4901:1-40-05(A), O.A.C. In its report, FES proposes a baseline of 6,760,000 megawatt-hours (MWh), based on the average of its annual Ohio retail sales in 2007, 2008, and 2009. Using this baseline and the 2010 statutory benchmarks, FES reports that it met its overall renewable energy resources benchmark of 16,556 renewable energy credits (RECs), its in-state renewable energy resources benchmark of 16,556 RECs, its overall SER benchmark of 344 solar RECs, and its in-state SER benchmark of 344 solar RECs, as well as a shortfall carried over from its 2009 benchmarks consisting of 52 solar RECs overall and 6 in-state solar RECs.
- (5) Shortly thereafter, on March 21, 2011, FES filed under seal four exhibits to its 2010 alternative energy portfolio status report. Contemporaneously, FES filed a motion for protective treatment of these exhibits to its alternative energy portfolio status report pursuant to Rule 4901-1-24(D), O.A.C. In support of its motion for protective order, FES asserts that the exhibits filed under seal contain information regarding the resources used by FES to satisfy its alternative energy benchmarks which, if made public, could be used by FES' competitors to gain an advantage in the competitive market for RECs and resources. More specifically, FES states that the exhibits identify the sources of non-solar and solar RECs retained by FES and would allow a competitor to learn the sources and structure of FES' REC acquisition strategy.
- (6) On February 14, 2012, Staff filed findings and recommendations on FES' alternative energy portfolio status report. Initially, Staff finds that FES was required to comply with the terms of the alternative energy portfolio benchmarks for 2010, as it had retail electric sales in Ohio, and that FES appropriately calculated its baseline and 2010 compliance obligations. Additionally, Staff states that it reviewed FES' Generation Attribute Tracking System (GATS) reserve subaccounts and confirms that, for 2010, FES satisfied its overall renewable energy resources benchmark, its in-state renewable energy resources benchmark, its overall SER benchmark, and its in-state SER benchmark, as well as its shortfall carried over from 2009. Staff further indicates that it reviewed FES' GATS reserve subaccount information and

confirmed that the RECs originated from generating facilities certified by the Commission and were associated with electricity generated during the applicable time frame. Accordingly, Staff recommends that FES be found to be in compliance with its 2010 alternative energy compliance obligations, including its shortfall carried over from 2009.

- (7) Initially, we will address FES' alternative energy portfolio status report. Upon review of FES' alternative energy portfolio status report and Staff's findings and recommendations, the Commission finds that FES is in compliance with its 2010 overall renewable energy resources benchmark, in-state renewable energy resources benchmark, overall SER benchmark, and in-state SER benchmark, as well as its shortfall of solar RECs carried over from 2009. Consequently, the Commission finds that FES' alternative energy portfolio status report for 2010 should be accepted.
- (8) Next, we turn to FES' motion for protective order. Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purpose of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (9) Similarly, Rule 4901-1-24, O.A.C., allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (10) Ohio law defines a trade secret as "information . . . that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other

persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Section 1333.61(D), Revised Code.

- (11) The Commission has reviewed the four exhibits filed under seal and covered by FES’ motion for protective order, as well as the assertions set forth in the memorandum in support. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the Commission finds that the exhibits filed under seal consisting of identification of the sources of the RECs obtained by FES constitute trade information. Its release is, therefore, prohibited under state law. The Commission finds that non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Consequently, the Commission finds that there is good cause to grant FES’ motion for a protective order as to the four exhibits. The four exhibits filed should receive protected status for an 18-month period from the date of this entry and should remain under seal in the Docketing Division for that time period. FES should note that Rule 4901-1-24(F), O.A.C., provides that protective orders issued pursuant to the rule automatically expire after 18 months. Accordingly, the Docketing Division should maintain under seal the four exhibits filed under seal on March 21, 2011.

It is, therefore,

ORDERED, That FES’ alternative energy portfolio status report for 2010 be accepted in accordance with Finding (7). It is, further,

ORDERED, That FES’ motion for a protective order be granted as set forth in Finding (11). It is, further,

ORDERED, That the four exhibits set forth in Finding (11) remain under seal in the Commission’s Docketing Division for an 18-month period. It is, further,


¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).


ORDERED, That a copy of this Finding and Order be served upon all parties of record.

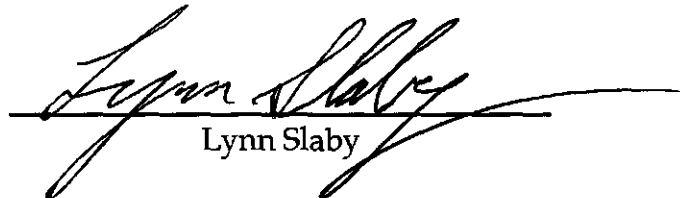
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Andre T. Porter

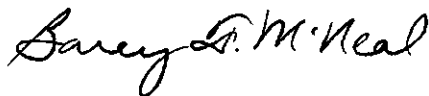

Cheryl L. Roberto


Lynn Slaby

MLW/sc

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Barcy F. McNeal

Barcy F. McNeal
Secretary