

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Dayton Power and     )  
Light Company's Annual Alternative     )     Case No. 12-1203-EL-ACP  
Energy Portfolio Status Report.     )

FINDING AND ORDER

The Commission finds:

- (1) The Dayton Power and Light Company (DP&L) is an electric distribution utility as defined in Section 4928.01(A)(6), Revised Code.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric distribution utilities companies to acquire a portion of their electricity supply for retail customers in Ohio from alternative energy resources. Specifically, the statute requires that, for 2011, 1.00 percent of the electricity sold by means of retail electric sales in Ohio must come from renewable energy resources with 0.03 percent of that coming from solar energy resources (SER). Furthermore, half of the renewable energy resources, including the SERs, must be met with resources located within Ohio.
- (3) Rule 4901:1-40-05(A), Ohio Administrative Code (O.A.C.), requires that, unless otherwise ordered by the Commission, each electric utility 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 (Staff) must conduct an annual compliance review with regard to the benchmarks. Further, Rule 4901:1-40-08(A), O.A.C., provides that electric utilities that fail to meet their applicable benchmarks are required to remit a compliance payment based on the amount of noncompliance in the absence of a *force majeure* determination.
- (4) On April 13, 2012, DP&L filed its 2011 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, DP&L proposed a baseline of 11,256,731 megawatt-hours (MWhs), which DP&L indicated is based on its standard offer sales over the prior three years. Using this baseline and the 2011 statutory benchmarks, DP&L computes its compliance obligations to be 1,689 MWhs for Ohio Solar, 1,688 MWhs for Non-Ohio Solar, 54,595 MWhs for Ohio Non-Solar Renewable, and 54,595 for Non-Ohio Non-Solar Renewable. DP&L asserted that it satisfied all of its 2011 compliance obligations.

- (5) On January 7, 2013, Staff filed its findings and recommendations on DP&L's alternative energy portfolio status report. Initially, Staff finds that DP&L was required to comply with the terms of the alternative energy portfolio benchmarks for 2011.

Staff indicates that it has reviewed DP&L's computations of its baseline and compliance obligations for 2011. Staff finds that DP&L appropriately calculated its baseline and compliance obligations for 2011.

DP&L indicates that it had sufficient RECs to satisfy its total non-solar obligation, as well as the specific minimum in-state non-solar requirement, for 2011. Staff's review of the unredacted data indicates that the specific RECs that DP&L proposed to use for 2011 compliance were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2011.

DP&L also indicates that it had sufficient S-RECs to satisfy its total solar obligation, as well as the specific minimum in-state solar requirement, for 2011. Staff's review of the unredacted data indicates that the specific S-RECs that DP&L proposed to use for 2011 compliance were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2011.

As a result of its review, Staff recommends that DP&L be found in compliance with its 2011 alternative energy portfolio compliance obligations. Staff further

recommends that DP&L transfer the RECs and S-RECs detailed on Attachment 1 of its filing to its GATS reserve subaccount for Ohio compliance purposes. Such transfer should occur within 45 days of the Commission's final decision in this proceeding. Staff will review the details of this transfer for confirmation and to ensure consistency with the data from Attachment 1.

Finally, Staff recommends that for future compliance years DP&L transfer the appropriate RECs and S-RECs to its GATS reserve subaccount between March 1<sup>st</sup> and April 15<sup>th</sup> so as to precede the filing of its Ohio annual compliance status report with the Commission.

- (6) Upon review of DP&L's alternative energy portfolio status report and Staff's findings and recommendations, the Commission finds that DP&L is in compliance with its 2011 alternative energy portfolio compliance obligations. The Commission finds that DP&L should transfer the RECs and SRECs detailed in Attachment 1 of its filing to its GATS reserve subaccount for compliance purposes within 45 days of this Finding and Order.
- (7) On April 13, 2012, DP&L filed a motion for protective order and memorandum in support to designate as confidential portions of Attachment 1 to its alternative energy portfolio status report. Specifically, DP&L seeks to protect the portion of Attachment 1 to the alternative energy portfolio status report which specifies the Facility Name, Certificate Serial Numbers, and Ohio Certificate Number of those counterparties from whom DP&L acquired RECs in the course of satisfying its 2011 renewable energy benchmark requirements.
- (8) 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 purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, 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*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

- (9) Similarly, Rule 4901-1-24, O.A.C., allows for the issuance of 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 examined the information covered by the motion for protective order for Attachment 1 to DP&L's alternative energy portfolio status report. 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,<sup>1</sup> the Commission finds that the information contained in Attachment 1 to the alternative energy portfolio status report constitutes trade secret information. Release of the redacted portions of this document is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the Commission finds that DP&L's motion for protective order for Attachment 1 to its alternative energy portfolio status report is reasonable and should be granted.

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<sup>1</sup> 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).

- (12) Rule 4901-1-24(F), O.A.C., provides for protective orders to automatically expire 18 months after the date of their issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least 45 days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.

It is, therefore,

ORDERED, That DP&L's alternative energy portfolio status report for 2011 be accepted in accordance with Finding (6). It is, further,

ORDERED, That DP&L's motion for protective order for Attachment 1 to its alternative energy portfolio status report is granted in accordance with Finding (11). It is, further,

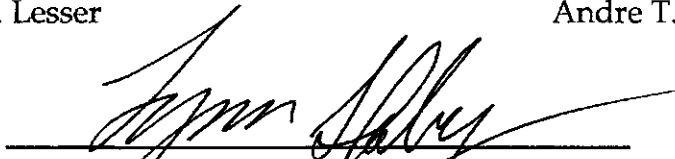
ORDERED, That a copy of this finding and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman


  
Steven D. Lesser

  
Andre T. Porter

  
Lynn Slaby

BAM/sc

Entered in the Journal  
**JAN 30 2013**

  
Barcy F. McNeal  
Secretary