

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of DPL Energy Resources,)
Inc.'s Annual Alternative Energy) Case No. 12-1205-EL-ACP
Portfolio Status Report.)

FINDING AND ORDER

The Commission finds:

- (1) DPL Energy Resources, Inc. (DPLER), is an electric services company as defined in Section 4928.01(A)(9), Revised Code, and, as such, is subject to the jurisdiction of the Commission.
- (2) Section 4928.64(C), 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 2011, 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 0.030 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 0.060 percent for 2012.
- (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, the Commission's Staff (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 April 13, 2012, DPLER filed its 2011 alternative energy portfolio status report pursuant to Section 4928.64, Revised Code, and Rule 4901:1-40-05(A), Ohio Administrative Code (O.A.C.), along with a motion for protective treatment of the status report pursuant to Rule 4901-1-24(D), O.A.C. In its redacted status report, DPLER proposes a baseline of 2,995,684 megawatt-hours, based on its annual sales for 2008, 2009, and 2010. Using this baseline and the 2011 statutory benchmarks, DPLER reports that it met its overall renewable energy resources benchmark of 14,529 renewable energy credits (RECs), its in-state renewable energy resources benchmark of 14,529 RECs, its overall SER benchmark of 449 solar RECs, and its overall SER benchmark of 450 in-state solar RECs.

In its motion for protective order, DPLER states that it seeks confidential treatment for information in its status report including specifications of the facility name, certificate serial numbers, and Ohio certificate number of the counterparties from which the RECs were acquired. DPLER asserts that the identity of the source of supply of the RECs is proprietary, trade secret information, and that its public disclosure would subject DPLER to a competitive disadvantage.

- (5) On December 18, 2012, Staff filed findings and recommendations regarding DPLER's alternative energy portfolio status report. Initially, Staff notes that DPLER was required to comply with the terms of the alternative energy portfolio benchmarks for 2011, as it had retail electric sales in Ohio. Staff also notes that DPLER appropriately calculated its baseline and 2011 compliance obligation.

Additionally, Staff states that it reviewed DPLER's Generation Attribute Tracking System (GATS) reserve

subaccounts and confirms that, for 2011, DPLER satisfied its overall renewable energy resources benchmark, its in-state renewable energy resources benchmark, its overall SER benchmark, and its in-state SER benchmark. Staff also notes that it reviewed DPLER's 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 timeframe. Staff states, however, that DPLER has not moved any RECs or solar RECs to its GATS reserve subaccount for its 2011 Ohio compliance activities, but has only indicated in its status report which RECs and solar RECs it intends to use for its compliance.

Consequently, Staff recommends that DPLER be found to be in compliance with its 2011 alternative energy compliance obligations, contingent upon its transfer of the RECs and solar RECs detailed in Attachment 1 of its status report to its GATS reserve subaccount for Ohio compliance purposes within 45 days of the Commission's order in this proceeding. Additionally, Staff recommends that, for future compliance years in which DPLER utilizes GATS to demonstrate its Ohio compliance efforts, DPLER initiate the transfer of the appropriate RECs and solar RECs to its GATS reserve subaccount between March 1 and April 15, so as to precede the filing of its annual alternative energy portfolio status report with the Commission.

- (6) Initially, we will address DPLER's alternative energy portfolio status report. Upon review of DPLER's alternative energy portfolio status report and Staff's findings and recommendations, the Commission finds that DPLER is in compliance with its 2011 overall renewable energy resources benchmark, in-state renewable energy resources benchmark, overall SER benchmark, and in-state SER benchmark, provided that DPLER transfers its RECs and solar RECs detailed in Attachment 1 of its filing to its GATS reserve subaccount for Ohio compliance purposes within 45 days of this order.

The Commission further finds, with respect to future compliance years, DPLER shall initiate the transfer of the appropriate RECs and solar RECs to its GATS reserve subaccount between March 1 and April 15, consistent with Staff's recommendation.

- (7) Next, we turn to DPLER's 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 purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information that, under state and federal law, may not be released. The Supreme Court of Ohio 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).
- (8) Similarly, Rule 4901-1-24, O.A.C., allows an attorney examiner 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."
- (9) 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.
- (10) The Commission has reviewed the redacted information covered by DPLER's 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 Supreme Court of Ohio,¹ the Commission finds that the redacted information consisting of the REC suppliers' facility names, certificate serial numbers, and Ohio certificate numbers constitutes trade secret information. Its release is, therefore, prohibited under state law. The Commission also 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 DPLER's motion for protective order for the above-detailed information. The portions of the status report filed under seal should receive protected status for an 18-month period from the date of this finding and order and should remain under seal in the Docketing Division for that time period. DPLER 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 portions of the status report filed under seal on April 13, 2012.

It is, therefore,

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

ORDERED, That DPLER's motion for protective order be granted as set forth in Finding (10). It is, further,

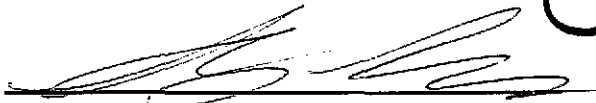
ORDERED, That DPLER's status report filed under seal on April 13, 2012, remain under seal in the Commission's Docketing Division for an 18-month period. It is, further,


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).

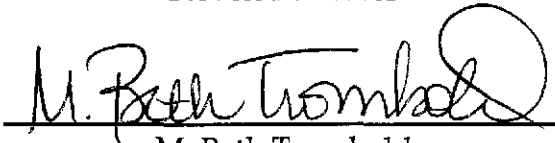
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby

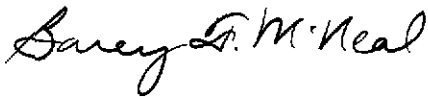

M. Beth Trombold


Asim Z. Haque

MWC/sc

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Barcy F. McNeal
Secretary