

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Champion Energy     )  
Services, LLC's Annual Alternative     ) Case No. 12-1260-EL-ACP  
Energy Portfolio Status Report.         )

FINDING AND ORDER

The Commission finds:

- (1) Champion Energy Services, LLC (Champion) 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 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).
- (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 (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 17, 2012, Champion 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., along with its compliance plan pursuant to Rule 4901:1-40-03(C), O.A.C. On that same date, Champion also filed a motion for protective order and motion for permission to appear pro hac vice on behalf of Alicia Rigler. In its status report, Champion states that it had Ohio retail sales for only a part of the three preceding calendar years and, therefore, proposes a baseline based on projected annual retail sales in Ohio, as described in Rule 4901:1-40-03(B)(2)(b), O.A.C. Using its proposed baseline and the 2011 statutory benchmarks, Champion reports that it met its overall renewable energy resources benchmark, in-state renewable energy resources benchmark, overall SER benchmark, and in-state SER benchmark.
- (5) With respect to its motion for protective order, Champion asserts that the redacted portions of Section II and Exhibit A of its alternative energy portfolio status report and compliance plan contain data that, if made public, could harm Champion's viability in the competitive retail electric market. Champion explains that it seeks protection of information regarding projected annual retail electric sales and calculations based on those projections. Specifically, Champion has redacted its projected annual retail sales; its 2011 renewable energy baseline and benchmark requirements, which are based on its projected annual sales; and its future baseline and benchmark projections. Champion submits that this information is competitively sensitive and constitutes trade secret information. Champion states that it does not disclose the redacted information publicly. Therefore, Champion requests that the redacted information be treated as confidential.
- (6) On September 5, 2013, Staff filed findings and recommendations regarding Champion's alternative energy portfolio status report, along with a motion for protective order. In its findings and recommendations, Staff finds that Champion was required to comply with the terms of the alternative energy portfolio benchmarks for 2011, as it had retail electric sales in Ohio. Staff states, however, that

Champion's proposed baseline is incorrect, which resulted in overstated compliance obligations. Staff explains that, with no sales in 2008 or 2009, and sales in 2010 of 47,185 megawatt-hours, Champion's baseline for 2011 should have been 47,185 megawatt-hours, consistent with the methodology required by Rule 4901:1-40-03(B)(2)(a), O.A.C. Staff indicates that it recalculated Champion's 2011 compliance obligations, using the correct baseline, as well as accounting for excess renewable energy credits (RECs) and solar RECs from the prior compliance year.<sup>1</sup>

Additionally, Staff states that it reviewed Champion's Generation Attribute Tracking System (GATS) reserve subaccount data and confirms that, for 2011, Champion satisfied its overall renewable energy resources benchmark, in-state renewable energy resources benchmark, overall SER benchmark, and in-state SER benchmark. Staff further indicates that it confirmed that the RECs and solar RECs originated from generating facilities certified by the Commission and were associated with electricity generated during the applicable timeframe. Staff notes that the RECs and solar RECs retired by Champion exceed its 2011 alternative energy compliance obligations.

Accordingly, Staff recommends that Champion be found to be in compliance with its 2011 alternative energy compliance obligations. Staff further recommends that the excess RECs and solar RECs retired via Champion's GATS reserve subaccount that exceeded the amount necessary for compliance in 2011 be eligible to be applied against applicable future compliance obligations, provided that the timing does not conflict with Rule 4901:1-40-04(D)(3), O.A.C. Finally, Staff recommends that, for future compliance years in which Champion utilizes GATS to demonstrate its Ohio compliance efforts, Champion 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.

---

<sup>1</sup> *In the Matter of Champion Energy Services, LLC's Annual Alternative Energy Portfolio Status Report*, Case No. 11-2799-EL-ACP, Finding and Order, at 3 (June 5, 2013).

- (7) In its motion for protective order, Staff requests that, to the extent the Commission grants Champion's motion for protective order, the confidential version of Staff's findings and recommendations also be protected from public release. Staff notes that it has filed a public version of its findings and recommendations, which contains redactions of the information claimed to be confidential by Champion.
- (8) Initially, the Commission will address Champion's alternative energy portfolio status report. Upon review of the report and Staff's findings and recommendations, the Commission finds that Champion 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. Consequently, the Commission finds that Champion's alternative energy portfolio status report for 2011 should be accepted.

The Commission further finds that, consistent with Staff's recommendation, the RECs and solar RECs retired via Champion's GATS reserve subaccount that exceeded the amount necessary for compliance in 2011 may be applied against applicable future compliance obligations, provided that the timing does not conflict with Rule 4901:1-40-04(D)(3), O.A.C. Finally, with respect to future compliance years, the Commission directs Champion to 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. The Commission further directs Champion to file its annual alternative energy portfolio status report by April 15 of each year, in accordance with Rule 4901:1-40-05(A), O.A.C.

- (9) Next, we turn to Champion's and Staff's motions 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 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).

- (10) 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."
- (11) 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.
- (12) The Commission has reviewed the redacted information covered by Champion's and Staff's motions for protective order, as well as the assertions set forth in each 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,<sup>2</sup> the Commission finds that the redacted information contained in Champion's 2011 alternative energy portfolio status report and compliance plan, as well as in Staff's findings and recommendations, constitutes trade secret information. Release of this information 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 Champion's and Staff's motions for protective order are reasonable and should be granted.

---

<sup>2</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).

- (13) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this finding and order, or until May 13, 2015. Until that date, the docketing division should maintain, under seal, the information filed confidentially in Champion's 2011 alternative energy portfolio status report and compliance plan, as filed under seal on April 17, 2012, as well as the confidential version of Staff's findings and recommendations, as filed under seal on September 5, 2013.
- (14) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Champion wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Champion.
- (15) Finally, with respect to the motion for permission to appear pro hac vice filed on behalf of Alicia Rigler, representing Champion, the Commission finds that the motion is reasonable and should be granted.

It is, therefore,

ORDERED, That Champion's alternative energy portfolio status report for 2011 be accepted in accordance with finding (8). It is, further,


ORDERED, That the motions for protective order filed by Champion and Staff be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the confidential information contained in Champion's 2011 alternative energy portfolio status report and compliance plan, as filed under seal on April 17, 2012, and the confidential version of Staff's findings and recommendations, as filed under seal on September 5, 2013, for a period of 18 months, ending on May 13, 2015. It is, further,

ORDERED, That Champion's motion for the pro hac vice admission of Alicia Rigler be granted. It is, further,

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

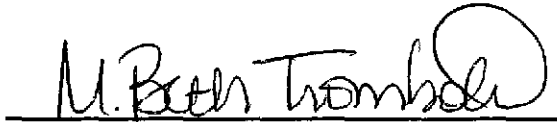
THE PUBLIC UTILITIES COMMISSION OF OHIO



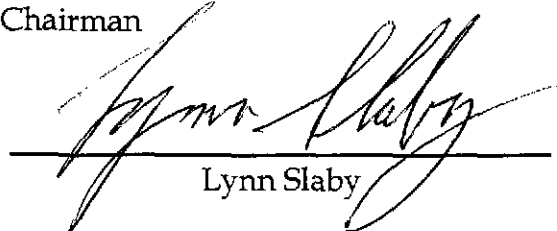
Todd A. Snitchler, Chairman




Steven D. Lesser



M. Beth Trombold



Lynn Slaby

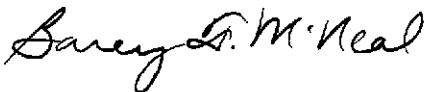


Asim Z. Haque

SJP/sc

Entered in the Journal

**NOV 13 2013**



Barcy F. McNeal  
Secretary