

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Alternative )  
Energy Portfolio Status Report of Liberty ) Case No. 13-751-EL-ACP  
Power Holdings, LLC. )

FINDING AND ORDER

The Commission finds:

- (1) Liberty Power Holdings, LLC (Liberty Power or Company) is an electric services company as defined in R.C. 4928.01(A)(9) and, as such, is subject to the jurisdiction of this Commission.
- (2) R.C. 4928.64(B)(2) establishes benchmarks for electric services companies to acquire a portion of their electricity supply for retail customers in Ohio from renewable energy resources. Half of the renewable benchmark must be met with resources located within Ohio (in-state renewable benchmark), including a portion from solar energy resources (solar benchmark), half of which must be met with resources located within Ohio (in-state solar benchmark). The specific renewable compliance obligations for 2012 are 1.50 percent (which includes the solar requirement) and 0.06 percent for solar. R.C. 4928.65 provides that an electric utility or electric services company may use renewable energy credits (RECs) to satisfy all or part of a renewable energy resource benchmark, including a solar benchmark (SRECs). Ohio Adm.Code 4901:1-40-01(BB) defines a REC as the environmental attributes associated with one MWh of electricity generated by a renewable energy resource, except for electricity generated by facilities as described in Ohio Adm.Code 4901:1-40-04(E).
- (3) Ohio Adm.Code 4901:1-40-05(A) requires each electric services company to annually file by April 15 an annual alternative energy portfolio status report (AEPS report), unless otherwise ordered by the Commission. The AEPS report must analyze all activities the company undertook in the previous year in order to demonstrate how pertinent alternative energy portfolio benchmarks have been met. Staff then conducts an annual compliance review with regard to the benchmarks.

- (4) On March 27, 2013, Liberty Power filed a request for waiver of the baseline calculation methodology specified by Ohio Adm.Code 4901:1-40-03(B)(2)(b). This provision directs an electric services company with no in-state retail electric sales during the preceding three calendar years to use a projection of its in-state retail electric sales for a full calendar year to calculate its initial baseline. Liberty Power states that it had no Ohio retail sales in 2009, 2010, or 2011, and proposes a baseline using its actual, rather than projected, Ohio retail sales in 2012.
- (5) On April 3, 2013, Staff filed a response to Liberty Power's request for waiver. Staff recommends that a waiver be granted allowing Liberty Power's baseline to be determined using actual, rather than projected, sales for 2012.
- (6) Although R.C. 4928.64(B) directs that the baseline for compliance with the renewable requirements be calculated using the average kWh sales for the preceding three calendar years, the statute does not specify a methodology for calculating baselines where a company does not have a three-year history of electric retail sales in Ohio. Ohio Adm.Code 4901:1-40-02(B) provides that the Commission may, upon a motion filed by a party, waive any requirement of that chapter, other than a statutory mandate, for good cause shown. After consideration of Staff's recommendation, the Commission finds Liberty Power's request for waiver of Ohio Adm.Code 4901:1-40-03(B)(2)(b) to be reasonable, and directs that Liberty Power be permitted to calculate its initial baseline using its actual Ohio retail sales in 2012.
- (7) On April 15, 2013, Liberty Power filed its 2012 AEPS report, pursuant to R.C. 4928.64 and Ohio Adm.Code 4901:1-40-05(A), with a motion for protective order. In its AEPS report, Liberty Power proposes a baseline of 1,815 MWh. Using this baseline and the 2012 statutory benchmarks, Liberty Power reports that it has met its renewable, in-state renewable, solar, and in-state solar benchmarks.
- (8) With respect to its motion for protective order, Liberty Power asserts that the redacted portions of its AEPS report contain data that, if made public, could harm its ability to compete in Ohio's retail electric generation marketplace. The Company seeks to prevent public disclosure of information regarding any

RECs required and obtained, as well as the 10-year forecast of estimated sales and estimated RECs and SRECs. The Company avows that the redacted information has not been publicly disclosed and constitutes trade secret information.

- (9) On June 3, 2013, Liberty Power filed updated data regarding its actual delivered sales volume for 2012.
- (10) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43 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). Ohio Adm.Code 4901-1-24 allows the Commission to issue an order to protect the confidentiality of information 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. R.C. 1333.61(D) defines a trade secret as information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that: (1) 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; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997). In that case, the Court also listed six factors for analyzing a trade secret claim: (1) the extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6)

the amount of time and expense it would take for others to acquire and duplicate the information. *Plain Dealer*, 524-525, 687 N.E.2d 672, citing *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App.3d 131, 134-135, 7 OBR 165, 169, 454 N.E.2d 588, 592. Further, an entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under the statute and additionally must take some active steps to maintain its secrecy. See, *Fred Siegel Co., L.P.A. v. Arter & Hadden* (1999), 85 Ohio St.3d 171, 181, 707 N.E.2d 853, 862.

- (11) Applying the statutory requirements and the Court's six-factor test discussed in *Plain Dealer* and *Besser*, the Commission has held that motions for protective orders with respect to AEPS reports should be granted for projected data, but denied for any current or historical data that has been publicly disclosed, such as a company's historical intrastate sales or REC requirements that are a mathematical function of publicly-reported sales. See, e.g., *Direct Energy Services, LLC*, Case No. 12-1233-EL-ACP, Finding and Order (December 11, 2013) at 5-6. With respect to Liberty Power's motion in this case, we find that the motion should be denied with respect to its intrastate sales for 2012 and calculation of REC requirements shown in paragraph 3 of its AEPS report. This sales data is already publicly available in the Company's annual report to this Commission, and the REC requirements are calculated using the Company's published sales. However, we also find that Liberty Power's motion should be granted with respect to its ten-year forecast of sales and REC requirements shown in paragraph 5 of its AEPS report, as such information relates to future projections that the Company asserts have not been publicly disclosed. Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 18 months. Therefore, confidential treatment shall be afforded to its forecast of sales and REC requirements shown in paragraph 5 of its AEPS report for a period ending 18 months from the date of this order. Any motion to extend such period of confidential treatment must be filed at least 45 days in advance of the expiration date, pursuant to Ohio Adm.Code 4901-1-24(F), or this information may be released without prior notice.

- (12) On June 21, 2013, Staff filed its review and recommendations of the Company's AEPS report. Staff finds that Liberty Power was required to comply with the renewable benchmarks for 2012, as it had retail electric sales in Ohio. Staff notes that, although the Company initially proposed a baseline of 1,815 MWh, the actual delivered sales volume for 2012 was 1,705 MWh based on supplemental information provided by the Company. Additionally, Staff reviewed Liberty Power's PJM EIS Generation Attribute Tracking System (GATS) reserve subaccount data and concludes that, for 2012, Liberty Power satisfied its renewable, in-state renewable, solar, and in-state solar benchmarks. Staff also confirmed that the RECs and SRECs originated from generating facilities certified by the Commission and were associated with electricity generated during the applicable timeframe. However, Staff reports that Liberty Power's compliance obligations are one REC and one SREC lower when using the correct baseline of 1,705 MWh. Therefore, Liberty Power retired one non-Ohio SREC and one non-Ohio REC in excess of its 2012 compliance obligations. Accordingly, Staff recommends that Liberty Power be found to be in compliance with its 2012 renewable energy compliance obligations.
- (13) In regards to the excess REC and SREC, Staff recommends that Liberty Power coordinate with Staff and GATS representatives to adjust the quantity of RECs and SRECs transferred to the reserve subaccount for 2012 compliance purposes so that the quantity transferred matches Liberty Power's compliance obligation as determined by the Commission. If such adjustments cannot be completed prior to March 1, 2014, Staff recommends that the excess REC and SREC be eligible to be applied administratively to a future compliance obligation, consistent with Ohio Adm.Code 4901:1-40-04(D)(3). Staff further recommends that, for future compliance years in which Liberty Power utilizes GATS to demonstrate its Ohio compliance efforts, Liberty Power initiate the transfer of the appropriate RECs and SRECs to its GATS reserve subaccount between March 1 and April 15 so as to precede the filing of its annual AEPS report with the Commission.
- (14) In considering Liberty Power's AEPS report, we first note that Liberty Power's request for waiver of Ohio Adm.Code 4901:1-40-03(B)(2)(b) is granted as set forth above, and Liberty Power

will calculate its initial baseline using its actual Ohio retail sales in 2012. Further, upon review of Staff's findings and recommendations, the Commission finds that Liberty Power is in compliance with its 2012 renewable, in-state renewable, solar, and in-state solar benchmarks; and that the Company's AEPS report for 2012 should be accepted using the corrected baseline of 1,705 MWh. The Commission also directs that, for future compliance years, Liberty Power initiate the transfer of the appropriate RECs and SRECs to its GATS reserve subaccount between March 1 and April 15, consistent with Staff's recommendations. Further, as Liberty Power was in excess of its 2012 compliance obligations, the Company is directed to coordinate with Staff and GATS representatives to adjust the quantity of RECs and SRECs transferred to the reserve subaccount for 2012 compliance purposes consistent with Staff's recommendations noted above.

It is, therefore,

ORDERED, That Liberty Power's request for waiver of Ohio Adm.Code 4901:1-40-03(B)(2)(b) be granted. It is, further,

ORDERED, That Liberty Power's AEPS report for 2012 be accepted using the corrected baseline of 1,705 MWh. It is, further,

ORDERED, That Liberty Power take all actions regarding Staff's recommendations as adopted above. It is, further,

ORDERED, That Liberty Power's motion for protective order be granted with respect to its forecast of sales and REC requirements shown in paragraph 5 of its AEPS report, pursuant to Ohio Adm.Code 4901-1-24, until June 11, 2015. It is, further,

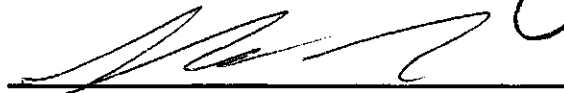
ORDERED, That Liberty Power's motion for protective order be denied as to the historical intrastate sales and REC requirement calculations shown on paragraph 3 of its AEPS report filed on April 15, 2013, and the Company's June 3, 2013 filing. It is, further,

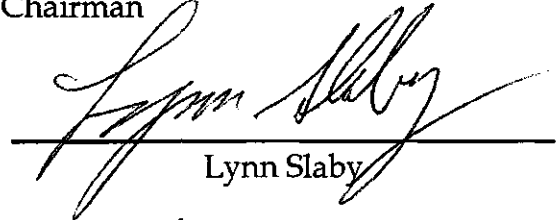
ORDERED, That, no sooner than 31 days after the issuance of this order, the Docketing Division shall release the Company's redacted paragraph 3 of its AEPS report filed on April 15, 2013 and the June 3, 2013 filing. It is, further,

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

  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

RMB/vrm

Entered in the Journal

**DEC 18 2013**

  
Barcy F. McNeal

Barcy F. McNeal  
Secretary