

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Ohio Power)
Company's 2010 Annual Alternative) Case No. 11-2417-EL-ACP
Energy Portfolio Status Report.)

FINDING AND ORDER

The Commission finds:

- (1) Ohio Power Company (OP) is an electric distribution utility as defined in R.C. 4928.01(A)(6).
- (2) R.C. 4928.64(B) establishes benchmarks for electric distribution utilities 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).
- (3) Ohio Adm.Code 4901:1-40-05(A) 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 electric utility 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, Staff must conduct an annual compliance review with regard to the benchmarks.
- (4) On April 15, 2011, OP filed its 2010 alternative energy portfolio status report, pursuant to R.C. 4928.64 and Ohio Adm.Code 4901:1-40-05(A), along with a motion for

protective order. In its status report, OP proposes a baseline of 24,858,867 megawatt-hours (MWh) based on its average sales over the three prior calendar years, with adjustments made for economic growth and customer choice. Using its proposed baseline and the 2010 statutory benchmarks, OP reports that it met its overall renewable energy resources benchmark, in-state renewable energy resources benchmark, overall SER benchmark, and in-state SER benchmark, including a shortfall carried over from its 2009 benchmarks.

- (5) With respect to its motion for protective order, OP asserts that the redacted portions of its alternative energy portfolio status report contain data that, if made public, could harm OP in the competitive retail electric market. OP explains that it seeks protection of the identity, sources, and amount of renewable energy credits (RECs) and solar RECs acquired by OP in order to comply with its benchmarks. OP submits that this information is competitively sensitive and constitutes trade secret information. OP states that it does not disclose the redacted information publicly. Therefore, OP requests that the redacted information be treated as confidential.
- (6) On October 24, 2013, Staff filed findings and recommendations regarding OP's alternative energy portfolio status report. In its findings and recommendations, Staff finds that OP, as an electric distribution utility, was required to comply with the terms of the alternative energy portfolio benchmarks for 2010, as it had retail electric sales in Ohio. With respect to OP's proposed baseline, Staff explains that OP revised its three-year average to 24,859,041 MWh, following discussions with Staff, in order to reflect more accurate sales data. Staff notes that the revised baseline is a better representation of OP's sales and includes adjustments for economic development previously approved by the Commission. *In re Ohio Power Company*, Case No. 10-487-EL-ACP, Opinion and Order (Aug. 21, 2013) at 5-6.

Additionally, Staff states that it reviewed OP's Generation Attribute Tracking System (GATS) reserve subaccount data and confirms that, for 2010, OP satisfied, based on the revised baseline, its overall renewable energy resources benchmark, in-state renewable energy resources benchmark, overall SER benchmark, and in-state SER benchmark, including the shortfall carried over from 2009. 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.

Accordingly, Staff recommends that OP be found to be in compliance with its 2010 alternative energy compliance obligations, including its shortfall from 2009. Further, Staff recommends that, for future compliance years in which OP utilizes GATS to demonstrate its Ohio compliance efforts, OP 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.

- (7) Initially, the Commission will address OP's alternative energy portfolio status report. Upon review of the report and Staff's findings and recommendations, the Commission finds that OP 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, including the shortfall carried over from 2009. Consequently, the Commission finds that OP's alternative energy portfolio status report for 2010 should be accepted. With respect to future compliance years, the Commission directs OP 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.
- (8) Next, we turn to OP's motion for protective order. 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 Title 49 of the Revised Code. 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).

- (9) Similarly, Ohio Adm.Code 4901-1-24 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." R.C. 1333.61(D).
- (11) The Commission has reviewed the redacted information covered by OP'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 R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the Commission finds that the redacted information contained in OP's 2010 alternative energy portfolio status report constitutes trade secret

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).

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 OP's motion for protective order is reasonable and should be granted.

- (12) 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 for a period ending 18 months from the date of this Finding and Order, or until July 8, 2015. Until that date, the docketing division should maintain, under seal, the information filed confidentially in OP's 2010 alternative energy portfolio status report, as filed under seal on April 15, 2011.
- (13) Ohio Adm.Code 4901-1-24(F) 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 OP 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 OP.

It is, therefore,

ORDERED, That OP's alternative energy portfolio status report for 2010 be accepted in accordance with finding (7). It is, further,


ORDERED, That the motion for protective order filed by OP be granted. It is, further,


ORDERED, That the Commission's docketing division maintain, under seal, the confidential information contained in OP's 2010 alternative energy portfolio status report, as filed under seal on April 15, 2011, for a period of 18 months, ending on July 8, 2015. It is, further,

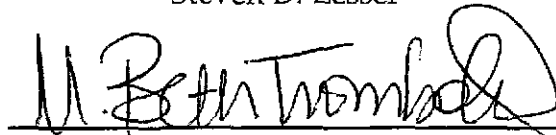
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

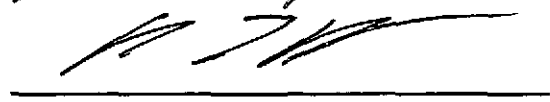
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby

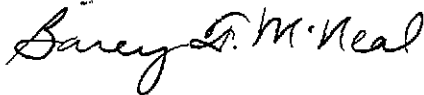

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