

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy     )  
Portfolio Status Report for 2011 of Ohio     ) Case No. 12-1212-EL-ACP  
Power Company.                                     )

FINDING AND ORDER

The Commission finds:

- (1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company)<sup>1</sup> 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 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) 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.

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<sup>1</sup> On March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company (CSP) into Ohio Power Company (OP). *In re Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2376-EL-UNC, Entry (Mar. 7, 2012).

- (4) On April 13, 2012, AEP Ohio filed its 2011 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, AEP Ohio notes that, because the merger of CSP and OP was approved to be effective as of December 31, 2011, the Company elected to file a single report for 2011 that includes the necessary information for both CSP and OP. Specifically, AEP Ohio proposes baselines of 19,178,928 megawatt-hours (MWh) and 24,237,929 MWh for CSP and OP, respectively, based on the average sales over the three prior calendar years, with adjustments made for economic growth and customer choice. Using the proposed baselines and the 2011 statutory benchmarks, AEP Ohio reports that CSP and OP met their respective overall renewable energy resources benchmarks, in-state renewable energy resources benchmarks, overall SER benchmarks, and in-state SER benchmarks.
- (5) With respect to its motion for protective order, AEP Ohio asserts that the redacted portions of its alternative energy portfolio status report contain data that, if made public, could harm the Company in the competitive retail electric market. AEP Ohio explains that it seeks protection of the identity, sources, and amount of renewable energy credits (RECs) and solar RECs acquired by the Company in order to comply with its benchmarks. AEP Ohio submits that this information is competitively sensitive and constitutes trade secret information. AEP Ohio states that it does not disclose the redacted information publicly. Therefore, AEP Ohio requests that the redacted information be treated as confidential.
- (6) On June 14, 2012, AEP Ohio filed a letter regarding an error in its 2011 alternative energy portfolio status report. AEP Ohio notes that 548 RECs that were utilized in the 2009 annual alternative energy portfolio status report were inadvertently included in the 2011 report. AEP Ohio further notes that, in order to correct the error, the Company intends to replace the 548 RECs with new RECs identified in an attachment to the letter. AEP Ohio also filed, on June 14, 2012, a motion for protective order,

seeking to protect from disclosure the identity, sources, and amount of the new RECS, for the same reasons enumerated in the Company's prior motion.

- (7) On May 16, 2014, Staff filed findings and recommendations regarding AEP Ohio's alternative energy portfolio status report. In its findings and recommendations, Staff finds that AEP Ohio, as an electric distribution utility, was required to comply with the terms of the alternative energy portfolio benchmarks for 2011, as it had retail electric sales in Ohio.

Additionally, Staff states that it reviewed AEP Ohio's Generation Attribute Tracking System (GATS) reserve subaccount data and confirms that, for 2011, the Company satisfied its overall renewable energy resources benchmarks, in-state renewable energy resources benchmarks, overall SER benchmarks, and in-state SER benchmarks.

Accordingly, Staff recommends that AEP Ohio be found to be in compliance with its 2011 alternative energy compliance obligations. Further, Staff recommends that, for future compliance years in which AEP Ohio utilizes GATS to demonstrate its Ohio compliance efforts, the Company 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.

- (8) Initially, the Commission will address AEP Ohio's alternative energy portfolio status report. Upon review of the report, as corrected on June 14, 2012, and Staff's findings and recommendations, the Commission finds that AEP Ohio is in compliance with its 2011 overall renewable energy resources benchmarks, in-state renewable energy resources benchmarks, overall SER benchmarks, and in-state SER benchmarks. Consequently, the Commission finds that AEP Ohio's alternative energy portfolio status report for 2011, as corrected on June 14, 2012, should be accepted. With respect to future compliance years, the Commission directs AEP Ohio 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.

- (9) Next, we turn to AEP Ohio's motions for protective order filed on April 13, 2012, and June 14, 2012. 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).
- (10) 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."
- (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." R.C. 1333.61(D).
- (12) The Commission has reviewed the redacted information covered by AEP Ohio's motions for protective order, as well as the assertions set forth in the memoranda 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,<sup>2</sup> the Commission finds that the redacted information contained in AEP Ohio's 2011 alternative energy portfolio status report, including the redacted corrections in the attachment filed on June 14, 2012, 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 AEP Ohio's motions for protective order are reasonable and should be granted.

- (13) 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 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Finding and Order, or until July 23, 2016. Until that date, the docketing division should maintain, under seal, the information filed confidentially in AEP Ohio's 2011 alternative energy portfolio status report, as filed under seal on April 13, 2012, and the confidential attachment filed on June 14, 2012.
- (14) 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 AEP Ohio 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 AEP Ohio.

It is, therefore,

ORDERED, That AEP Ohio's alternative energy portfolio status report for 2011, as corrected on June 14, 2012, be accepted in accordance with finding (8). It is, further,

ORDERED, That the motions for protective order filed by AEP Ohio on April 13, 2012, and June 14, 2012, be granted. It is, further,

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<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).

ORDERED, That the Commission's docketing division maintain, under seal, the confidential information contained in AEP Ohio's 2011 alternative energy portfolio status report, as filed under seal on April 13, 2012, and the confidential attachment filed on June 14, 2012, for a period of 24 months, ending on July 23, 2016. It is, further,

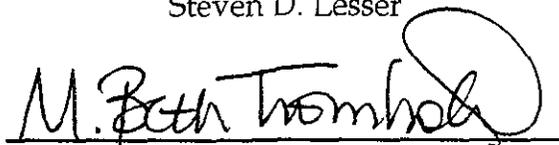
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

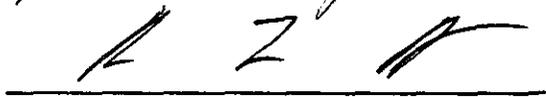
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Thomas W. Johnson, Chairman

  
Steven D. Lesser

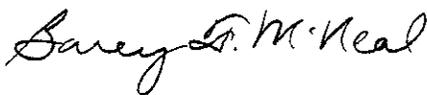
  
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