

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy)
Portfolio Status Report for 2012 of Interstate) Case No. 13-922-EL-ACP
Gas Supply, Inc.)

FINDING AND ORDER

The Commission finds:

- (1) Interstate Gas Supply, Inc. (IGS 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) and solar energy credits (SRECs) to meet its respective renewable energy and solar benchmarks. 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 April 15, 2013, IGS 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. With respect to its motion for protective order, IGS seeks to prevent disclosure of its actual load, REC requirements and compliance results for 2012. IGS asserts that this data, if made public, could harm its ability to compete in Ohio's retail electric generation marketplace. The Company states that it has taken measures to maintain the confidentiality of this data, and requests that the redacted information be treated as confidential.
- (5) 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.

- (6) 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.
- (7) With respect to the instant case, we find that the Company's motion should be denied. The Company's intrastate sales total for 2012 is publicly available in its annual report to this Commission for fiscal assessment, and the corresponding REC requirements can be calculated from this published data. Further, the Company's results in achieving or missing its benchmarks is the primary focus of the AEPS report and these reports are docketed to provide, rather than discourage, public access.
- (8) In its AEPS report, IGS proposes a baseline using its actual Ohio retail sales for 2012, as the Company had no Ohio retail sales for the years 2009 through 2011. Using this baseline and the 2012 statutory benchmarks, IGS reports that it has met its renewable, in-state renewable, solar, and in-state solar benchmarks.

- (9) On December 11, 2013, Staff filed its review and recommendations of the Company's AEPS report. Staff does not contest the use of IGS's actual Ohio retail sales for 2012 as its baseline, since the Company had no intrastate retail sales for the years 2009 through 2011. However, after filing its report, IGS informed Staff that the Company's actual 2012 sales were actually higher than the redacted sales figure included in its filing. This update resulted in a slightly higher baseline and an increase in the Company's compliance obligation by seven RECs, at least four of which must come from Ohio facilities. Staff verified that the Company retired RECs and S-RECs for 2012 compliance via its PJM EIS Generation Attribution Tracking system (GATS) account, including seven additional RECs to address the Company's actual sales in 2012. Staff reviewed the Company's GATS reserve subaccount and confirmed that the Company satisfied its total non-solar obligation, as well as the specific minimum in-state non-solar requirement, for 2012. The RECs that the Company transferred to its GATS reserve subaccount were sourced from generating facilities certified by the Commission and were, for the most part, associated with electricity generated between August 1, 2008, and December 31, 2012. However, the reserve subaccount details show numerous Ohio RECs from January and February 2013 as having been applied toward 2012 compliance. Staff also confirmed that the Company satisfied its total solar obligation, while exceeding the specific minimum in-state solar requirement for 2012. The SRECs that the Company transferred to its GATS reserve subaccount were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2012. Staff concluded that IGS has satisfied its 2012 AEPS compliance obligations, but recommends that, in the future, the Company use only RECs or SRECs associated with electricity that was generated no later than the end of the compliance year. Finally, Staff recommends that, for future compliance years in which the Company utilizes GATS to demonstrate its Ohio compliance efforts, IGS 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.

- (10) Upon review of the Company's AEPS report, as well as Staff's findings and recommendations, the Commission finds that the use of the Company's actual Ohio retail sales for 2012 as its baseline is reasonable, but that IGS should file, within 30 days of the issuance of this order, an amended AEPS report showing the correct actual load and AEPS compliance obligations for 2012. The Commission also directs that, for future compliance years, IGS use only RECs or SRECs associated with electricity generated no later than the end of the compliance year, and 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.

It is, therefore,

ORDERED, That IGS should file in this docket within 30 days of the issuance of this order, an amended 2012 AEPS report showing the correct actual load and compliance obligations. It is, further,

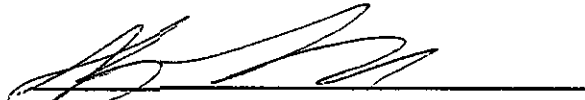
ORDERED, That IGS's motion for protective order be denied. It is, further,

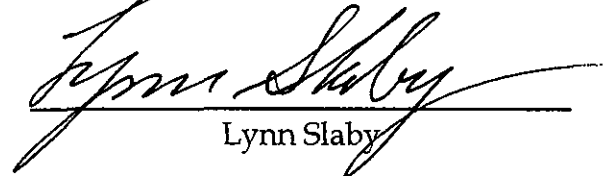
ORDERED, That, no sooner than 31 days after the issuance of this order, the Docketing Division shall release the redacted version of the Company's AEPS report filed under seal on April 15, 2013. It is, further,

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

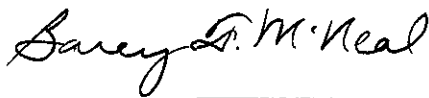

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