

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Applications for	:	Case Nos.	14-1049-EL-REN
Certification as an Eligible Ohio	:		14-1098-EL-REN
Renewable Energy Resource Generating	:		14-1100-EL-REN
Facility.			14-1101-EL-REN
			14-1102-EL-REN
			14-1103-EL-REN
			14-1104-EL-REN
			14-1127-EL-REN
			14-1128-EL-REN
			14-1129-EL-REN
			14-1129-EL-REN
			14-1130-EL-REN
			14-1136-EL-REN
			14-1147-EL-REN
			14-1148-EL-REN
			14-1104-EL-REN
			14-1149-EL-REN
			14-1154-EL-REN

**MEMORANDUM CONTRA
MOTION OF SRECTRADE, INC.
FOR A WAIVER OF RULE 4901-1-02(D)(4)
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

The Staff of the Public Utilities Commission of Ohio (Staff) opposes SRECTrade Incorporated's (SRECTrade or Company) motion for waiver of Ohio Adm. Code 4901-1-

02(D)(4) (Rule 4901-1-02(D)(4)).¹ Rule 4901-1-02(D)(4) establishes a uniform procedure for e-filing. If an e-filing is submitted after 5:30 p.m., the filing will be considered received at 7:30 a.m. the following day. This rule exists for consistency, clarity, and simplicity. The Public Utilities Commission of Ohio (Commission) Docketing Division (Docketing) is only open until 5:30 p.m. If something goes wrong with the e-filing system after business hours, Docketing cannot address the issue until the next day. Also, hard copies of filings are due to the Commission by 5:30 p.m. If hard copies must be filed by 5:30 p.m., but e-filings could be filed anytime until midnight, the situation would create inconsistent deadlines for filing documents with the Commission. Therefore, the requirement that e-filings be submitted by 5:30 p.m. is a reasonable one.

On June 30, 2014, SRECTrade filed sixteen SREC certification applications between 7:00 p.m. and 8:00 p.m. EST. Consequently, Staff considered these applications filed as of 7:30 a.m. on July 1, 2014. In response, SRECTrade filed a motion to waive Rule 4901-1-02 (D)(4). The Commission may only waive a rule when “good cause [is] shown.”² The following arguments demonstrate why SRECTrade fails to meet that

¹ As a procedural matter, Staff would like to note that the attorney representing SRECTrade Inc. has not sought permission to appear *pro hac vice* before the Commission in this case. Nor has she registered with the Supreme Court of Ohio to appear *pro hac vice* in the State of Ohio. See <https://www.supremecourt.ohio.gov/PHVDirectory/>. Under Ohio Adm. Code 4901-1-08(B), an out-of-state attorney may seek permission to appear *pro hac vice* before the Commission in any activity of a case upon filing a motion. The motion must include all the information and documents required by paragraph (A)(6) of section 2 of rule XII of the Rules for the Government of the Bar of Ohio.

² Ohio Adm. Code 4901-1-38 (B).

standard. Thus, the Commission should not allow the requested waiver of Rule 4901-1-02(D)(4) in this instance and find that the applications were filed as of July 1, 2014.

STATEMENT OF FACTS

The Commission must certify a facility as an Ohio renewable energy resource generating facility in order for the renewable energy credits (RECs) or solar RECs (SRECs) associated with that facility's electrical output to be recognized as viable compliance resources under Ohio's renewable energy mandate. After a renewable generating facility is certified, Commission Staff relays the relevant facility information to the applicable attribute tracking system (GATS). That information includes a date when the Commission would begin to recognize the facility's output. The Commission only recognizes a facility's output that occurs on or after the date that the facility's application for certification is filed with the Commission.³ PJM EIS Generation Attribute Tracking System (GATS) creates and tracks SRECs. For a SREC from a particular facility to be eligible under Ohio's renewable energy mandate for trading and selling on GATS, Staff must report to GATS that Staff has certified the facility. GATS considers this information monthly. It is GATS' policy to consider a facility's monthly output rather than daily output. If, for example, a facility is assigned a recognition date of June 30th, its SRECs will be tracked in GATS for the entirety of June. If the facility is assigned a recognition date of July 1st, the SRECs it generates will be tracked by GATS as of July 1.

³ *In the Matter of the Application of Teresa Straffin for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility, Case No. 11-2667-EL-REN (Finding and Order at 2) (Jun. 6, 2012).*

On June 30, 2014, SRECTrade filed sixteen applications for certification between 7:00 p.m. EST and 8:00 p.m. EST. Because the applications were filed after 5:30 p.m., they were considered received as of July 1st at 7:30 a.m. under Rule 4901-1-02(D)(4). Thus, if these facilities are certified, the recognition date assigned to these sixteen facilities and conveyed to GATS will be July 1, 2014. Also, Staff would not recognize any output from these facilities prior to July 1, 2014 for Ohio's renewable resource mandate.⁴ Therefore, whether the applications are considered filed as of June 30, 2014 or July 1, 2014 will determine whether these facilities, if certified, will receive recognition under Ohio's renewable energy mandate for output during the month of June 2014.

LAW AND ARGUMENT

A. SRECTrade filed the certification applications after 5:30 p.m. EST, June 30, 2014 and therefore, pursuant to Rule 4901-1-02(D)(4), the applications were received by the Commission on July 1, 2014.

The Commission should deny SRECTrade's request for waiver of Rule 4901-1-02. Rule 4901-1-02 (D)(4) states "any e-filed document received after five-thirty p.m. shall be considered filed at seven-thirty a.m. the next business day." When SRECTrade filed its applications for certification between 7:00 p.m. EST and 8:00 p.m. EST on June 30, 2014, Docketing could not receive the applications until 7:30 a.m. July 1, 2014, when Docketing opened for business.

⁴

The recognition date has relevance only for Ohio's renewable resource mandate, and it does not limit potential participation in other states' programs.

The Company argues that the Commission should grant a waiver because the Rule does not specify which time zone applies and the Company filed before 5:30 p.m. Pacific Time, the time zone where the Company is located. The Commission should find this argument fails for five reasons.

First, if the 5:30 p.m. deadline applies to the time zone where the filer is located, it would mean that there are twenty-four possible e-filing deadlines, one for each time zone. This would lead to confusion and inconsistency for Docketing. Second, hard copy filings are due by 5:30 p.m., which is when the Commission closes business for the day.⁵ It would be inconsistent for the Commission to continue accepting e-filed documents, but not hard copy filings. Third, the Commission has previously found in the context of serving documents, the time zone to be used is “the local time of the recipient.”⁶ In this case, Docketing was the recipient and therefore Eastern Time would apply. Fourth, SRECTrade was given notice of the 5:30 p.m. EST deadline in an e-mail from Staff. On May 30, 2014, counsel for the Company asked Staff if filing a certification application in May gives the Company recognition for output in May. In response, Staff wrote “If you submit a document today by 5:30 pm eastern and the document is not rejected it will have a filed date of 5/30/14. Anything filed after 5:30 today through Monday will have a filed

⁵ R.C. 4901.10.

⁶ *In the Matter of the Amendment of Chapter 4901-1 of the Ohio Administrative Code*, Case No. 00-2192-AU-ORD (Finding and Order at 6) (Jan. 30, 2001).

date of 6/2/14.”⁷ Therefore, the Company had notice of the 5:30 p.m. EST deadline on May 30, 2014. Fifth, as the Company mentions in its motion for waiver, it has filed nearly 2,000 applications for certification with the Commission.⁸ When those applications are submitted, the applicant receives a confirmation e-mail which states in part:

...Filings received after 5:30 p.m. *Eastern Time* will be deemed to be filed the following business day. All filings are subject to review and acceptance by the PUCO Docketing Division... (Emphasis added)

Consequently, the Company received nearly 2,000 e-filing confirmations indicating that the filing deadline is 5:30 p.m. EST.

For these five reasons, the Commission should find that SRECTrade’s argument regarding time zones fails and not allow waiver of Rule 4901-1-02 (D)(4) on that basis.

B. Despite SRECTrade’s excuses as to why it claims it was unaware of the Commission’s filing deadline, the Commission’s e-filing deadline was 5:30 p.m. EST and SRECTrade failed to comply.

On June 5, 2014, the Joint Committee on Agency Rule Review (JCARR) amended Chapter 4901-1-02 to include the 5:30 p.m. e-filing deadline within the Ohio Administrative Code. JCARR set the effective date of the amendment to June 15, 2014. The Company argues in its motion to waive Rule 4901-1-02 that it had no notice of the 5:30 p.m.

⁷ Staff has not attached this email to the memorandum contra to avoid public disclosure of any confidential email contained in the email chain. However, the Staff would be willing and able to provide this email to the Commission upon request.

⁸ See SRECTrade Inc. Motion for Waiver at 2.

deadline because the “Ohio Laws site” did not reflect the amended language of Rule 4901-1-02.⁹

First, even if the Company was unaware of the e-filing deadline rule, the 5:30 p.m. deadline was the law at the time SRECTrade filed and had been the law for about three years. The Commission made the 5:30 p.m. e-filing deadline effective in a 2011 Order. Commission rules become effective after a Commission order and do not require JCARR review before becoming effective. R.C. 4903.15. In the 2011 Finding and Order, the Commission stated:

[A]cceptance of the [e-filing] by the Commission’s Docketing Division (Docketing) will be deemed to occur on the date time-stamped by DIS on the final page of the official document if confirmation occurred during Docketing’s normal business hours, or on the next business day if confirmation occurred after normal business hours.¹⁰

Furthermore, the Company had notice of the 5:30 p.m. deadline. As mentioned previously, in e-mail correspondence with Staff, legal counsel was told on Friday, May 30, 2014 that “[a]nything filed after 5:30[p.m.] today through Monday will have a filed date of 6/2/14.” Therefore, the Company had notice of the 5:30 p.m. EST deadline on May 30, 2014.

⁹ See SRECTrade Inc. Motion for Waiver at 1.

¹⁰ *In the Matter of the Expansion of the Electronic Filing Pilot Project and Waiver of Procedural Rules 4901-1-02 through 4901-1-04, Ohio Administrative Code*, Case No. 06-900-AU-WVR (Finding and Order at 1-2) (Nov. 9, 2011).

Since 2011, Ohio law has required documents to be e-filed with the Commission by 5:30 p.m. or the documents would be considered filed as of 7:30 a.m. the next business day. SRECTrade had notice of this rule. Nevertheless, SRECTrade filed its applications between 7:00 p.m. and 8:00 p.m. EST on June 30, 2014. Therefore, pursuant to Ohio law, Docketing considered the Company's applications for certification filed as of July 1, 2014. The Commission should not waive the e-filing deadline rule. The rule creates consistency, clarity and simplicity. Furthermore, the Commission should only waive a rule when there is "good cause shown," not for any mistake a company makes.¹¹

CONCLUSION

The Commission should deny SRECTrade's motion for waiver of Rule 4901-1-1-02(D)(4). Rule 4901-1-1-02(D)(4) expressly states that e-filed documents submitted after 5:30 p.m. are considered received at 7:30 a.m. the following day. SRECTrade filed its certification applications after the 5:30 p.m. deadline and Staff considered them filed as of 7:30 a.m. the next day. This is what Ohio law requires and the Commission should so find.

¹¹

See Ohio Adm. Code 4901-1-38.

Respectfully submitted,

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/s/ Katie L. Johnson

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Memorandum Contra to the Motion for Waiver of Rule 4901-1-02(D)(4) filed by SRECTrade Inc., submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served via electronic mail, upon General Counsel for applicant, Allyson Umberger, at allyson.umberger@srectrade.com, SRECTrade, Inc., 90 New Montgomery Street, Suite 333, San Francisco, CA, 94105, this ___ day of August, 2014.

/s/ Katie L. Johnson

Katie L. Johnson
Assistant Attorney General

This foregoing document was electronically filed with the Public Utilities

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Summary: Memorandum Contra Motion of SRECTrade, Inc. Motion for Waiver of Rule 4901-1-02(D)(4) submitted by Assistant Attorney General Katie Johnson on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio