

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE RENEWABLE
PORTFOLIO STANDARD COMPLIANCE
STATUS REPORT FOR 2016 OF ASPIRITY
ENERGY, LLC.

CASE NO. 17-1067-EL-ACP

OPINION AND ORDER

Entered in the Journal on September 9, 2020

I. SUMMARY

{¶ 1} The Commission finds Aspirity Energy, LLC has not satisfied its 2016 renewable portfolio standard compliance obligations and that, therefore, an alternative compliance payment is warranted. The Commission directs Aspirity Energy, LLC, or any successor company to Aspirity Energy, LLC, to remit a payment, required under R.C. 4928.64, in the amount of \$18,479.75.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} Aspirity Energy, LLC (Aspirity 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.

{¶ 3} 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. R.C. 4928.645 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 megawatt hour (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).

{¶ 4} Ohio Adm.Code 4901:1-40-05(A) requires each electric services company to annually file by April 15 a renewable portfolio standard compliance status report (RPS

report), unless otherwise ordered by the Commission. The RPS 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 of the company's filing and the records of the applicable attribute tracking system to ensure that RECs were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated for the compliance period.

B. Procedural History

{¶ 5} On April 14, 2017, Aspirity filed its RPS compliance status report for the 2016 compliance year. In its compliance filing, Aspirity proposed a baseline of 11,800 megawatt hours (MWH) which it indicated was its Ohio retail electric sales for 2016. Applying the statutory benchmarks to its proposed baseline, Aspirity calculated its 2016 compliance obligations to be 14 Solar MWHs and 281 Non-Solar MWHs. With the exception of one REC, Aspirity indicated that it had obtained the necessary RECs and SRECs to satisfy its 2016 compliance obligations. The Company further indicated that it had transferred RECs and S-RECs to its PJM EIS Generation Attribute Tracking system (GATS) reserve subaccount for Ohio compliance purposes. To address its one REC shortfall, the Company proposed to pay an alternative compliance payment of \$49.75.

{¶ 6} On March 14, 2018, Staff filed its Review and Recommendations for Aspirity's 2016 RPS report. Staff reports that Aspirity, as an electric services company who had retail electric sales in in the state of Ohio during 2016, has an RPS obligation for 2016. Staff found that Aspirity accurately calculated its 2016 RPS compliance obligations. However, upon its review of the Company's GATS reserve subaccount for 2016, Staff found that the GATS data does not show evidence of any RECs or S-RECs having been retired for 2016 Ohio compliance.

{¶ 7} With no apparent retirements for 2016, Staff submits that an alternative compliance payment is warranted. Using the baseline proposed by Aspirity, Staff calculates

a solar obligation of 14.16 MHWs. In the event of a compliance payment, this solar obligation would, consistent with Ohio Adm.Code 4901:1-40-08(A), be rounded up to 15 MHWs. For the non-solar obligation, Staff calculates an amount of 280.84 MHWs, which it would similarly round to 281 MHWs. Thus, Staff calculates a total alternative compliance payment due of \$18, 479.75.

{¶ 8} By Entry issued January 1, 2019, a hearing at the Commission's offices was scheduled for February 8, 2019, for the purpose of resolving the issue of the amount of the alternative compliance payment that Aspiry, or any successor company to Aspiry, must make in order to satisfy Aspiry's 2016 RPS obligation. The hearing was held as scheduled.

C. Summary of the Hearing Record

{¶ 9} Aspiry failed to make an appearance at the February 8, 2019 hearing. At the hearing, the presiding attorney examiner took administrative notice of a letter received by the Commission, docketed in this case on January 8, 2019, from a person identifying himself as a former regulatory consultant for Aspiry. The letter indicates, among other things, that Aspiry "is no longer a going concern and is currently in federal bankruptcy proceedings."

{¶ 10} At the February 8, 2019 hearing, Staff presented the testimony of one witness, Stuart M. Siegfried, Utility Specialist 3, whose work activities revolve around implementing various facets of the renewable standards for RPS. Under oath and from the witness stand, Mr. Siegfried adopted his own written testimony, pre-filed on February 1, 2019. Among other things, Mr. Siegfried's testimony indicates:

- (a) Aspiry first applied for competitive retail electric service (CRES) certification as a power marketer in Ohio, in October of 2015. *In the Matter of the Certification Application of Aspiry Energy Mid-States LLC for Retail Generation Providers and Power*, Case No. 15-1738-EL-CRS (15-1738) Application (Oct. 9, 2015). Certificate Number 15-1023E(1), with an effective date of November 9, 2015

and an expiration date of November 10, 2017, was issued in 15-1738 to the Company under its name at the time, Aspirity Energy Mid-States LLC. Later, in the same case, the same certificate was reissued under the name Aspirity Energy, LCC, this time with an effective date of April 25, 2016, and an expiration date of November 9, 2017.

- (b) In August 2017, the Company filed notice in 15-1738 that it had filed a Chapter 11 bankruptcy petition to reorganize its business and that its customer contracts were proposed to be assigned to Exelon. The Company's Ohio CRES certificate was cancelled, effective November 9, 2017.
- (c) Cancellation of Aspirity's CRES authority has no impact on its 2016 RPS compliance requirements.
- (d) Presenting the Staff's position, Mr. Siegfried explained and reiterated the same conclusions and recommendations as are set forth in Staff's March 14, 2019 report in this case.

D. Commission Conclusion

{¶ 11} Upon review of Aspirity's 2016 RPS report and the record in this proceeding, we adopt Staff's findings and recommendations. We find that Aspirity's proposed compliance baseline for 2016 is reasonable. However, review of the Company's GATS reserve subaccount for 2016 reveals no evidence of any RECs or SRECs having been retired for 2016 Ohio compliance. On this basis, we find that Aspirity did not meet its 2016 compliance obligation, and therefore, an alternative compliance payment for 2016 from Aspirity or any successor company to Aspirity is warranted.

{¶ 12} Noting Aspirity's failure to appear at the February 8, 2018 hearing, based on the whole record, we find and conclude that \$18,479.75 is the amount of the alternative

compliance payment that Aspirity, or any successor company to Aspirity, must make in order to satisfy Aspirity's 2016 RPS obligation.

{¶ 13} Aspirity, or any successor company to Aspirity, is hereby directed to, as a condition precedent to beginning or continuing operations as an electric utility or electric service company in Ohio, make an \$18,479.75 alternative compliance payment for Aspirity's compliance year 2016. The payment should be directed to the Commission's Fiscal Division, payable to "Treasurer State of Ohio." A letter should also be attached to the payment stating that it is a compliance payment required by R.C. 4928.64 for deposit to the credit of the Advanced Energy Fund, under the control of the Ohio Development Services Agency and created under R.C. 4928.61. The letter should also cite Case No. 17-1067-EL-ACP, under which the Commission has ordered the payment. The address for the Commission is as follows: Public Utilities Commission of Ohio, Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, OH 43215.

{¶ 14} Aspirity, or its successor company shall be directed to file in this docket notice of such payment and, consistent with the requirements set forth in Ohio Adm.Code 4901:1-40-08(D), an attestation that it will not seek to recover from its customers the alternative compliance payment for compliance year 2016.

{¶ 15} Aspirity, or its successor company shall also be directed to comply with Staff's recommendations for future compliance years.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That Aspirity, or any successor company to Aspirity shall remit an alternative compliance payment of \$18,479.75, in accordance with the directives of Paragraph 13. It is, further,

{¶ 18} ORDERED, That Aspirity, or any successor company to Aspirity shall file notice of payment and an attestation in this docket, in accordance with the directives of

Paragraph 14. It is, further

{¶ 19} ORDERED, That Aspirity or any successor company to Aspirity shall comply with Staff's recommendations for future compliance years. It is, further,

{¶ 20} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

DEF/kck

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Case No(s). 17-1067-EL-ACP

Summary: Opinion & Order finding Aspirity Energy, LLC has not satisfied its 2016 renewable portfolio standard compliance obligations and that, therefore, an alternative compliance payment is warranted. The Commission directs Aspirity Energy, LLC, or any successor company to Aspirity Energy, LLC, to remit a payment, required under R.C. 4928.64, in the amount of \$18,479.75 electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio