

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy)
Portfolio Status Report of BlueStar Energy)
Services, Inc. d/b/a BlueStar Energy) Case No. 11-2492-EL-ACP
Solutions.)

FINDING AND ORDER

The Commission finds:

- (1) BlueStar Energy Services, Inc., d/b/a BlueStar Energy Solutions (BlueStar) is an electric services company as defined in Section 4928.01(A)(9), Revised Code, and, as such, is subject to the jurisdiction of the Commission.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric services companies 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), 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). This requirement increased to 0.030 percent for 2011.
- (3) Rule 4901:1-40-05(A), Ohio Administrative Code (O.A.C.), requires that, unless otherwise ordered by the Commission, each electric services company file by April 15 of each year an annual alternative energy portfolio status report. The report must analyze all activities the company 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, Commission Staff (Staff) must conduct an annual compliance review with regard to the benchmarks. Finally,

Rule 4901:1-40-02(A), O.A.C., provides that electric services companies that do not serve Ohio retail electric customers are not required to comply with the terms of the alternative energy portfolio benchmarks.

- (4) On April 15, 2011, BlueStar filed its 2010 alternative energy portfolio status report pursuant to Section 4928.64, Revised Code, and Rule 4901:1-40-05(A), O.A.C. In its report, BlueStar indicates that, during 2010, it did not conduct any retail electric sales in Ohio.
- (5) Thereafter, on April 18, 2011, in the same docket, BlueStar filed its ten-year alternative energy compliance plan pursuant to Rule 4901:1-40-03(C), O.A.C., and accompanying exhibit and forecasted supply portfolio projections under seal. In conjunction with its plan and accompanying documents, BlueStar filed a motion requesting protective treatment of the entire plan and accompanying documents pursuant to Rule 4901-1-24(D), O.A.C. Subsequently, on May 16, 2011, BlueStar withdrew its motion for protective treatment and filed an amended motion for protective order.
- (6) In support of its amended motion for protective order, BlueStar asserts that the plan, exhibit, and forecasted supply portfolio projections filed on April 18, 2011, contain confidential and proprietary information that constitute trade secrets and are not disclosed to anyone other than as part of a legal proceeding and, even then, only pursuant to a protective agreement. Therefore, BlueStar requests that the plan and accompanying documents, as filed under seal, be treated as confidential.
- (7) On February 23, 2012, Staff filed findings and recommendations on BlueStar's alternative energy portfolio status report. Staff reports that it has independently verified BlueStar's claim that it did not conduct retail electric generation sales in Ohio during 2010. Staff concludes that, consequently, BlueStar had no compliance obligation in 2010. Staff recommends that BlueStar's filing be accepted and that no further steps be required.

- (8) Initially, we will address BlueStar's alternative energy portfolio status report. Upon review of BlueStar's alternative energy portfolio status report and Staff's findings and recommendations, the Commission finds that BlueStar had no compliance obligation with respect to the alternative energy portfolio standards in 2010, as it did not conduct retail electric generation sales in Ohio during 2010 and that BlueStar's 2010 alternative energy portfolio status report should be accepted.
- (9) Next we turn to BlueStar's amended motion for protective order. Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purpose of Title 49 of the Revised Code. Section 149.43, Revised Code, 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 Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (10) Similarly, Rule 4901-1-24, O.A.C., allows the Commission to issue an order to protect the confidentiality of information contained in a field 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." Section 1333.61(D), Revised Code.

- (12) The Commission has reviewed the plan and accompanying documents filed under seal and covered by BlueStar's amended motion for protective order, as well as the assertions set forth in the memorandum in support. While the Commission notes that BlueStar's amended motion for protective order could have more thoroughly discussed application of Section 1333.61(D)(1), Revised Code, nevertheless, upon its own review of the exhibits, and applying the requirements of Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the Commission finds that the plan and accompanying documents filed under seal constitute trade information. Their release is, therefore, prohibited under state law. The Commission finds that non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Consequently, the Commission finds that there is good cause to grant BlueStar's amended motion for protective order as to the plan and accompanying documents. The plan and accompanying documents should receive protected status for an 18-month period from the date of this Finding and Order and should remain under seal in the Docketing Division for that time period. BlueStar should note that Rule 4901-1-24(F), O.A.C., provides that protective orders issued pursuant to the rule automatically expire after 18 months. Accordingly, the Docketing Division should maintain under seal the plan, exhibit, and forecasted supply portfolio projections filed under seal on April 18, 2011.

It is, therefore,

ORDERED, That BlueStar's alternative energy portfolio status report is accepted in accordance with Finding (8). It is, further,

ORDERED, That BlueStar's amended motion for protective order is granted as set forth in Finding (12). It is, further,

ORDERED, that the documents set forth in Finding (12) remain under seal in the Commission's Docketing Division for an 18-month period. It is, further,


¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 161 (1997).

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



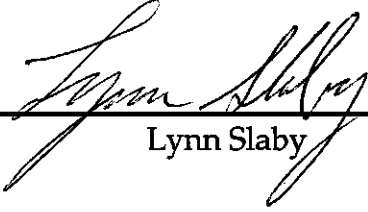
Todd K. Snitchler, Chairman



Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

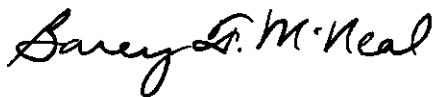


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Barcy F. McNeal
Secretary