

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy)
Resources Report for Calendar Year 2010) Case No. 11-2650-EL-ACP
from SMART Papers Holdings LLC.)

SECOND FINDING AND ORDER

The Commission finds:

- (1) SMART Papers Holdings LLC (SMART Papers) is an electric services company as defined in Section 4928.01(A)(9), Revised Code, and, as such, is subject to the jurisdiction of this 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), half of which must be met with resources located within Ohio (in-state renewable energy resources benchmark), and 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) Section 4928.64(C)(1), Revised Code, requires the Commission annually to review an electric services company's compliance with the most recent applicable benchmark and, in the course of that review, to identify any undercompliance or noncompliance of the company that it determines is weather-related, related to equipment or resource shortages for advanced energy or renewable energy resources as applicable, or is otherwise outside the company's control. To facilitate the Commission's annual review, 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) Subject to certain exceptions, Section 4928.64(C)(2), Revised Code, provides that, if the Commission determines, after notice and opportunity for hearing, and based upon its findings in the annual review regarding avoidable undercompliance or noncompliance, that the electric services company has failed to comply with any benchmark, the Commission shall impose a renewable energy compliance payment on the company. Section 4928.64(C)(2)(c), Revised Code, provides that the compliance payment shall be remitted to the Commission, for deposit to the credit of the advanced energy fund created under Section 4928.61, Revised Code. Additionally, Section 4928.64(C)(4), Revised Code, authorizes the Commission to determine whether an insufficient quantity of renewable energy resources was reasonably available in the market to facilitate an electric service company's compliance with the statutory benchmarks.
- (5) On April 25, 2011, SMART Papers 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, SMART Papers requested that the Commission make a *force majeure* determination, pursuant to Section 4928.64(C)(4), Revised Code, regarding SMART Papers' compliance with the statutory benchmarks for 2010. SMART Papers stated that it was unable to obtain any renewable energy credits (RECs) or solar RECs. Consequently, SMART Papers requested that the Commission make a *force majeure* determination or, in the alternative, determine and assess the amount of any renewable energy compliance payment. SMART Papers also requested leave to file its report after the filing deadline.
- (6) By finding and order issued on August 3, 2011, the Commission granted, in part, and denied, in part, SMART Papers' request for a *force majeure* determination. The Commission granted the request with respect to SMART Papers' overall SER benchmark and

in-state SER benchmark, contingent upon SMART Papers meeting revised benchmarks for 2011, which were increased to include the shortfall for 2010. SMART Papers' request was denied with respect to its overall renewable energy resources benchmark and in-state renewable energy resources benchmark. The Commission directed Staff to offer its recommendations regarding a renewable energy compliance payment in Staff's findings and recommendations regarding SMART Papers' alternative energy portfolio status report for 2010.

- (7) On July 9, 2012, Staff filed findings and recommendations regarding SMART Papers' alternative energy portfolio status report. Initially, Staff finds that SMART Papers was required to comply with the terms of the alternative energy portfolio benchmarks for 2010, as it had retail electric sales in Ohio. Staff notes that SMART Papers' proposed baseline of 10,045 megawatt-hours is based on actual Ohio retail sales in 2010, although the baseline is typically based on Ohio retail sales during the preceding three calendar years and SMART Papers reported Ohio retail sales of 6,422 megawatt-hours in its 2009 Intrastate Annual Report.¹ Staff explains that SMART Papers questions the accuracy of the 2009 sales figure and prefers to rely on the 2010 sales figure. Staff reports that it does not oppose SMART Papers' proposed baseline and, accordingly, Staff finds that SMART Papers accurately computed its 2010 compliance obligations.

Additionally, Staff recommends that SMART Papers be found to be in compliance with its adjusted solar compliance obligation for 2010 and that the deficiency be added to its 2011 solar compliance obligation, consistent with the *force majeure* determination in the Commission's August 3, 2011, finding and order. With respect to SMART Papers' overall renewable energy resources benchmark and in-state renewable energy resources benchmark, Staff recommends that SMART Papers remit a renewable energy compliance payment to the Commission in the amount of \$2,250, consistent with the requirements found in Rule 4901:1-40-08(B), O.A.C. The payment should be directed to the Commission's Fiscal Department and be made out to "Treasurer State of Ohio." A letter should be attached to the renewable energy compliance payment stating that it is a compliance payment required by

¹ In the Matter of the Filing of Annual Reports for Calendar Year 2009 by Certified Competitive Retail Electric Service Providers, Natural Gas Suppliers, and Governmental Aggregators, Case No. 10-3-GE-RPT.

Section 4928.64, Revised Code, for deposit to the credit of the advanced energy fund, under the control of the Ohio Department of Development, and created under Section 4928.61, Revised Code. The letter should cite the Commission case ordering the payment. Finally, Staff advises that SMART Papers should also file, in this docket, the attestation required by Rule 4901:1-40-08(D), O.A.C.

Staff also recommends that, for future compliance years in which SMART Papers utilizes the Generation Attribute Tracking System (GATS) to demonstrate its Ohio compliance efforts, SMART Papers 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) Upon review of SMART Papers' alternative energy portfolio status report for 2010 and Staff's findings and recommendations, the Commission finds that SMART Papers' request for leave to file its status report past the filing deadline should be granted and that its status report should be accepted. Additionally, consistent with our approval of SMART Papers' request for a *force majeure* determination with respect to its solar compliance obligation, we find that SMART Papers satisfied its adjusted solar compliance obligation for 2010 and that SMART Papers' solar compliance obligation for 2011 should be increased to include the shortfall for 2010. In light of our denial of SMART Papers' request for a *force majeure* determination regarding its overall renewable energy resources benchmark and in-state renewable energy resources benchmark, we find that SMART Papers' alternative proposal requesting assessment of a renewable energy compliance payment is reasonable and should be adopted. SMART Papers should remit a renewable energy compliance payment of \$2,250 to the Commission, in accordance with Staff's recommendations and the requirements of Rule 4901:1-40-08, O.A.C., to be deposited to the credit of the advanced energy fund created under Section 4928.61, Revised Code. SMART Papers is also directed to file in this docket the attestation required by Rule 4901:1-40-08(D), O.A.C., indicating that SMART Papers will not seek to recover the renewable energy compliance payment from consumers.

Finally, with respect to future compliance years, the Commission directs SMART Papers 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.

It is, therefore,

ORDERED, That SMART Papers' request for leave to file its alternative energy portfolio status report for 2010 out-of-time be granted. It is, further,

ORDERED, That SMART Papers' alternative energy portfolio status report for 2010 be accepted in accordance with finding (8). It is, further,

ORDERED, That SMART Papers' solar compliance obligation for 2011 be increased to include the shortfall for 2010. It is, further,


ORDERED, That SMART Papers remit a compliance payment of \$2,250 to the Commission to be deposited to the credit of the advanced energy fund. It is, further,

ORDERED, That a copy of this second finding and order be served upon all parties of record.

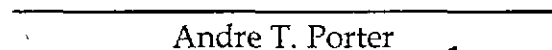
THE PUBLIC UTILITIES COMMISSION OF OHIO



Todd A. Snitchler, Chairman



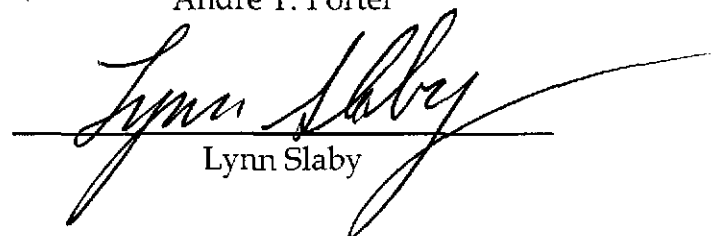
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