

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Alternative)
Energy Portfolio Status Report of North) Case No. 13-856-EL-ACP
American Power and Gas, LLC.)

FINDING AND ORDER

The Commission finds:

- (1) North American Power and Gas, LLC (North American 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) to satisfy all or part of a renewable energy resource benchmark, including a solar benchmark (SRECs). 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 10, 2013, North American 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. In its AEPS report, North American proposes to use its actual Ohio retail sales of 29,395 MWh for 2012 as its baseline, since the Company had no Ohio retail sales for the years 2009 through 2011. Using this baseline and the 2012 statutory benchmarks, North American calculated its 2012 compliance obligations to be 18 solar MWh, of which at least 9 MWh must originate from Ohio facilities, and 423 non-solar MWh, of which at least 212 MWh must originate from Ohio facilities. Using this baseline and the 2012 statutory benchmarks, North American reports that it has met its renewable, in-state renewable, solar, and in-state solar benchmarks.
- (5) With respect to its motion for protective order, North American asserts that portions of Attachment 1 of its AEPS report contain data that, if made public, could harm its ability to compete in Ohio's retail electric generation marketplace. Specifically, Company seeks protection of the facility names, certificate serial numbers, and Ohio certificate numbers for the RECs and SRECs required and obtained by North American, including its PJM EIS Generation Attribute Tracking System (GATS) subaccount details. The Company argues that this information provides a detailed roadmap to North American's sources and contract counterparties for RECs and SRECs. The Company states that it has exerted extensive efforts to maintain the confidentiality of its REC and SREC sources and that such confidentiality is critical to North American in obtaining RECs and SRECs moving forward. Therefore, North American requests that the redacted information be treated as confidential.
- (6) 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.

- (7) 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. With respect to North American's request to prohibit disclosure of the specific identity and location of North American's REC and SREC suppliers, the Commission finds that, unless such information has already been publicly disclosed, it may be protected as a trade secret as the Company contends that disclosure may impact its ability to obtain future RECs. Accordingly, North American's motion for protective order should be granted. Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 18 months. Therefore, confidential treatment shall be afforded to redacted pages 2 through 6 of Attachment 1 of the Company's AEPS report for a period ending 18 months from the date of this order. Any motion to extend such period of confidential treatment must be filed at least 45 days in advance of the expiration date, pursuant to Ohio Adm.Code 4901-1-24(F), or this information may be released without prior notice.

- (8) On June 10, 2013, Staff filed its review and recommendations of the Company's AEPS report. Staff finds that North American was required to comply with the renewable benchmarks for 2012, as it had retail electric sales in Ohio. Staff does not oppose the Company's initial baseline calculation, and reports that North American has accurately computed its compliance obligations for 2012. Staff has reviewed the Company's GATS reserve subaccount data and concludes that, for 2012, North American satisfied its renewable, in-state renewable, solar, and in-state solar benchmarks. Staff also confirmed that the RECs and SRECs originated from generating facilities certified by the Commission and were associated with electricity generated during the applicable timeframe. However, Staff reports that North American inadvertently retired four Ohio RECs and five other RECs more than were needed to satisfy its 2012 compliance obligations. Therefore, Staff recommends that North American be found to be in compliance with its 2012 renewable energy compliance obligations.
- (9) In regards to the excess RECs, Staff recommends that North American coordinate with Staff and GATS representatives to adjust the quantity of RECs transferred to the reserve

subaccount for 2012 compliance purposes so that the quantity transferred matches North American's compliance obligation as determined by the Commission. If such adjustments cannot be completed prior to March 1, 2014, Staff recommends that the excess RECs be eligible to be applied administratively to a future compliance obligation, consistent with Ohio Adm.Code 4901:1-40-04(D)(3). Staff further recommends that, for future compliance years in which North American utilizes GATS to demonstrate its Ohio compliance efforts, North American 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 North American's AEPS report, as well as Staff's findings and recommendations, the Commission finds that North American is in compliance with its 2012 renewable, in-state renewable, solar, and in-state solar benchmarks; and that the Company's AEPS report for 2012 should be accepted using a baseline of its actual Ohio retail sales of 29,395 MWh for 2012. The Commission also directs that, for future compliance years, North American 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. Further, as North American was in excess of its 2012 compliance obligations, the Company is directed to coordinate with Staff and GATS representatives to adjust the quantity of RECs transferred to the reserve subaccount for 2012 compliance purposes consistent with Staff's recommendations noted above.

It is, therefore,

ORDERED, That North American's AEPS report for 2012 be accepted using the corrected baseline of 29,395 MWh. It is, further,

ORDERED, That North American take all actions regarding Staff's recommendations as adopted above. It is, further,

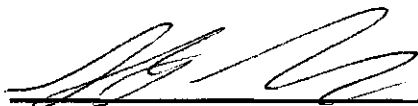
ORDERED, That North American's motion for protective order be granted, pursuant to Ohio Adm.Code 4901-1-24, until June 11, 2015. It is, further,

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

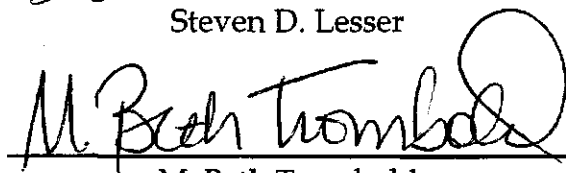
THE PUBLIC UTILITIES COMMISSION OF OHIO



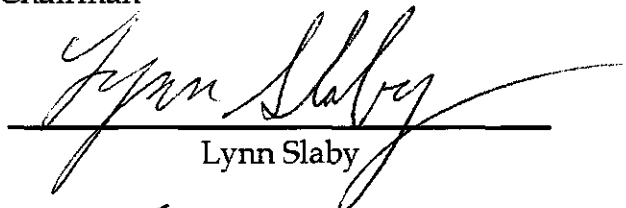
Todd A. Snitchler, Chairman



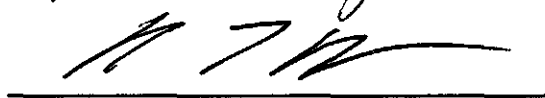
Steven D. Lesser



M. Beth Trombold



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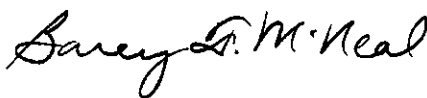


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Barcy F. McNeal
Secretary