

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy )  
Portfolio Status Report for 2012 of Energy ) Case No. 13-657-EL-ACP  
Plus Holdings LLC. )

FINDING AND ORDER

The Commission finds:

- (1) Energy Plus Holdings LLC (Energy Plus 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) 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 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 March 13, 2013, Energy Plus filed a request for waiver of the baseline calculation methodology specified by Ohio Adm.Code 4901:1-40-03(B)(2)(b). This provision directs an electric services company with no in-state retail electric sales during the preceding three calendar years to use a projection of its in-state retail electric sales for a full calendar year to calculate its initial baseline. Energy Plus states that it had no Ohio retail sales in 2009, 2010, or 2011, and proposes a baseline using its actual, rather than projected, Ohio retail sales in 2012.
- (5) On March 21, 2013, Staff filed a response to Energy Plus's request recommending that the waiver be granted.
- (6) Although R.C. 4928.64(B) directs that the baseline for compliance with the renewable requirements be calculated using the average kWh sales for the preceding three calendar years, the statute does not specify a methodology for calculating baselines where a company does not have a three-year history of electric retail sales in Ohio. Ohio Adm.Code 4901:1-40-02(B) provides that the Commission may, upon a motion filed by a party, waive any requirement of that chapter, other than a statutory mandate, for good cause shown. After consideration of Staff's recommendation, the Commission finds Energy Plus's request for waiver of Ohio Adm.Code 4901:1-40-03(B)(2)(b) to be reasonable, and directs that Energy Plus be permitted to calculate its initial baseline using its actual Ohio retail sales in 2012.
- (7) On April 10, 2013, Energy Plus 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. As noted above, Energy Plus will use its actual Ohio retail sales for 2012 of 2,062 MWh, 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, Energy Plus calculated its 2012 compliance obligations to be one solar MWh, of which at least one MWh must originate from Ohio facilities, and 30 non-solar MWh, of which at least 15 MWh must originate from Ohio facilities. Using this baseline and the 2012 statutory benchmarks, Energy Plus reports that it has met its renewable, in-state renewable, solar, and in-state solar benchmarks.
- (8) With respect to its motion for protective order, Energy Plus seeks to prevent disclosure of its calculation of REC requirements for 2012 on the second page of its AEPS report, as

well as its ten-year forecast of sales and REC requirements on the third page of its AEPS report. Energy Plus asserts that this data, if made public, could harm its ability to compete in Ohio's retail electric generation marketplace. The Company states that it has taken measures to maintain the confidentiality of this data, and requests that the redacted information be treated as confidential.

- (9) 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.

- (10) 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.
- (11) With respect to Energy Plus's motion in this case, we find that the motion should be denied with respect to its calculation of REC requirements shown on the second page of its AEPS report. The Company's intrastate sales for 2012 are publicly available in Energy Plus's annual report to this Commission, and the corresponding REC requirements can be calculated from this published data. However, we also find that Energy Plus's motion should be granted with respect to its ten-year forecast of sales and REC requirements shown on the third page of its AEPS report, as the Company asserts that this information has not been publicly disclosed. 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 its forecast of sales and REC requirements shown in paragraph 5 of its 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.

- (12) On May 15, 2013, Staff filed its review and recommendations of the Company's AEPS report. Staff finds that Energy Plus was required to comply with the renewable benchmarks for 2012, as it had retail electric sales in Ohio. As noted above, Staff agrees with the use of the Company's actual Ohio retail sales for 2012 as its baseline since the Company had no intrastate retail sales for the years 2009 through 2011. Staff reports that the Company accurately calculated its 2012 compliance obligations for such baseline, and retired RECs and S-RECs for 2012 compliance via its PJM EIS Generation Attribution Tracking system (GATS) account. Staff found that the RECs that the Company transferred to its GATS reserve subaccount were sourced from generating facilities certified by the Commission, and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2012. Further, Staff confirmed that the Company satisfied its total solar obligation, as well as the minimum in-state solar requirement, for 2012; and that the S-RECs that the Company transferred to its GATS reserve subaccount were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated between August 1, 2008, and December 31, 2012. Therefore, Staff recommends that Energy Plus be found to be in compliance with its 2012 renewable energy compliance obligations. Finally, Staff recommends that, for future compliance years in which the Company uses GATS to demonstrate its Ohio AEPS compliance, Energy Plus should 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.
- (13) Upon review of the Company's AEPS report, as well as Staff's findings and recommendations, the Commission finds that the Company's AEPS report for 2012 should be accepted, and that Energy Plus is in compliance with its 2012 renewable, in-state renewable, solar, and in-state solar benchmarks. The Commission also directs that, for future compliance years, Energy Plus 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.

It is, therefore,

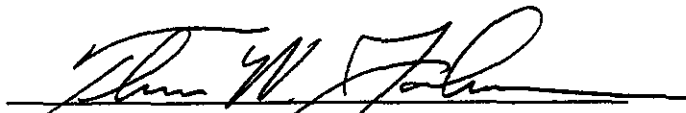
ORDERED, That the Company's AEPS report for 2012 be accepted, and Energy Plus comply with Staff's recommendations set forth above. It is, further,

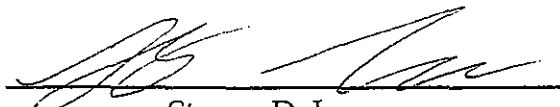
ORDERED, That Energy Plus's motion for protective order be granted with respect to its forecast of sales and REC requirements shown on the third page of its AEPS report, filed under seal on April 10, 2013, pursuant to Ohio Adm.Code 4901-1-24, until December 31, 2015. It is, further,


ORDERED, That Energy Plus's motion for protective order be denied with respect to the REC requirement calculations on the second page of its AEPS report; and that, no sooner than 31 days after the issuance of this order, the Docketing Division shall release the second page of the Company's AEPS report filed under seal. It is, further,

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

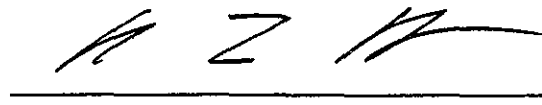
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Thomas W. Johnson, Chairman

  
Steven D. Lesser

  
Lynn Slaby

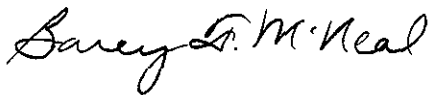
  
M. Beth Trombold

  
Asim Z. Haque

RMB/vrm

Entered in the Journal

JUL 9 2014

  
Barcy F. McNeal

Barcy F. McNeal  
Secretary