

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Alternative)
Energy Status Report of The Dayton Power) Case No. 14-477-EL-ACP
and Light Company.)

FINDING AND ORDER

The Commission finds:

- (1) The Dayton Power and Light Company (DP&L or the Company) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.
- (2) R.C. 4928.64(B) establishes benchmarks for electric utilities to acquire a portion of the electric utility's standard service offer from renewable energy resources. Specifically, the statute provides that, for 2013, a portion of the electric utility's electricity supply for its standard service offer must come from alternative energy sources (overall renewable energy resources benchmark), including 0.090 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 0.120 percent for 2014.
- (3) Ohio Adm.Code 4901:1-40-05(A) requires that, unless otherwise ordered by the Commission, each electric utility file by April 15 of each year an annual alternative energy portfolio status report. The report must analyze all activities the utility 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, Staff must conduct an annual compliance review with regard to benchmarks.
- (4) On April 15, 2014, the Company submitted its 2013 alternative energy status report.
- (5) On July 25, 2014, Staff filed findings and recommendations on DP&L's alternative energy status report. In its review, Staff initially finds that DP&L was required to comply with

the terms of the alternative energy portfolio benchmarks for 2013, as it is an electric distribution utility in Ohio with retail electric sales in Ohio. Further, Staff finds that the Company's proposed baseline and 2013 compliance obligations are reasonable and appropriately calculated.

- (6) Staff further states that it reviewed the Company's Generation Attribute Tracking System (GATS) reserve subaccount and confirms that, for 2013, DP&L satisfied its overall renewable energy resources benchmark, its in-state renewable energy resources benchmark, its overall SER benchmark, and its in-state SER benchmark. Staff also reports that it reviewed the Company's GATS reserve subaccount information and confirmed that the RECs originated from generating facilities certified by the Commission and associated with electricity generated during the applicable time frame.
- (7) Staff recommends that the Commission find DP&L in compliance with its 2013 alternative energy compliance obligations. Additionally, Staff recommends that, for future compliance years in which the Company is utilizing GATS to demonstrate its Ohio compliance efforts, the Company continue to 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 Ohio annual compliance status report with the Commission.
- (8) Upon review of DP&L's alternative energy portfolio status report and Staff's findings and recommendations, the Commission finds that DP&L is in compliance with its 2013 overall renewable energy resources benchmark, in-state renewable energy resources benchmark, overall SER benchmark, and its in-state SER benchmark. Consequently, the Commission finds that DP&L's alternative energy portfolio status report for 2013 should be accepted. Finally, as recommended by Staff, the Commission finds that, for future compliance years in which the Company uses GATS to demonstrate its Ohio compliance efforts, the Company shall continue to initiate the transfer of the appropriate RECs and solar RECs to its GATS reserve subaccount between March 1 and April 15, in order to precede the

filing of its annual compliance status report with the Commission.

- (9) On April 15, 2014, DP&L filed a motion for protective order and memorandum in support to designate as confidential portions of Attachment 1 to its alternative energy portfolio status report. Specifically, DP&L seeks to protect the portion of Attachment 1 to the alternative energy portfolio status report which specifies the Facility Name, Certificate Serial Numbers, and Ohio Certificate Number of those counterparties from whom DP&L acquired RECs in the course of satisfying its 2013 benchmark requirements.
- (10) 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 which, 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).
- (11) Similarly, Ohio Adm.Code 4901-1-24 allows for the issuance of an order to protect the confidentiality of information contained in a filed 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."
- (12) 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." R.C. 1333.61(D).

- (13) The Commission has examined the redacted information covered by the motion for protective order for Attachment 1 to DP&L's alternative energy portfolio status report. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the Commission finds that the information contained in Attachment 1 to the alternative energy portfolio status report constitutes trade secret information. Release of the redacted portions of this document is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Therefore, the Commission finds that DP&L's motion for protective order for Attachment 1 to its alternative energy portfolio status report is reasonable and should be granted.
- (14) Ohio Adm.Code 4901-1-24(F) provides for protective orders to automatically expire 24 months after the date of their issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond twenty four months shall file an appropriate motion at least 45 days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.

It is, therefore,

ORDERED, That DP&L's alternative energy portfolio status report for 2013 is accepted in accordance with Finding (8). It is, further,

ORDERED, That DP&L follow the Commission directives as set forth in Finding (8). It is, further,

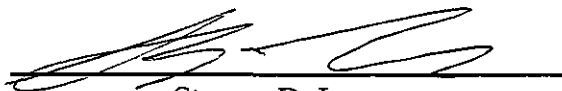
ORDERED, That DP&L's motion for protective order for Attachment 1 to its alternative energy portfolio status report is granted in accordance with Finding (13). It is, further,

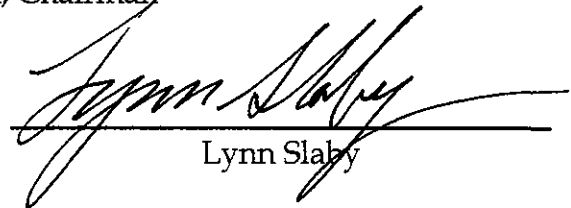
¹ See *State ex-rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

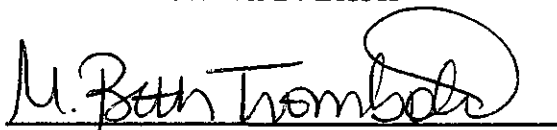
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser


Lynn Slaby

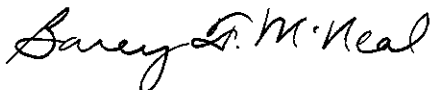

M. Beth Trombold


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BMA/sc

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Barcy F. McNeal
Secretary