

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy)
Portfolio Status Report for 2012 of Term) Case No. 13-1100-EL-ACP
Power & Gas, LLC dba ENCOA.)

FINDING AND ORDER

The Commission finds:

- (1) Term Power & Gas, LLC dba ENCOA (ENCOA or the 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. Ohio Adm.Code 4901:1-40-02(A) provides that any entity that does not serve Ohio retail electric customers shall not be required to comply with the AEPS rules.

- (4) On April 30, 2013, ENCOA filed its 2012 AEPS report, in which it reports that the Company is a new entrant in the Ohio retail electric market and only began to provide electric supply to customers in 2013. In addition, ENCOA filed a motion for protective order pursuant to Ohio Adm.Code 4901-1-24, regarding Exhibit A to its AEPs report. Exhibit A indicates ENCOA's projected (1) baseline calculations, (2) renewable and solar energy benchmarks, (3) renewable energy compliance efforts, and (4) multi-year renewable energy forecast. ENCOA asserts that disclosure of such information to competitors would damage its position in Ohio's retail electric market, because competitors can obtain economic value from that information.
- (5) On June 3, 2014, Staff filed its review and recommendations for ENCOA's AEPS report. Staff reports that the Company is an electric services company in the state of Ohio, but that ENCOA had no retail electric sales in 2012 and, thus, had no 2012 AEPS obligation. Accordingly, Staff recommends that ENCOA's filing be accepted, with no further action required.
- (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*, 7 Ohio App.3d 131, 134-135, 454 N.E.2d 588, 592 (8th Dist. 1983). 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*, 85 Ohio St.3d 171, 181, 707 N.E.2d 853, 862 (1999).

- (7) In 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 future projected data, but denied for any current or historical data that has been publicly disclosed, such as a company's historical intrastate sales or renewable energy credit (REC) requirements that are a mathematical function of publicly-

reported sales. See, e.g., *Public Power, LLC*, Case No. 13-884-EL-ACP, Finding and Order (December 18, 2013) at 3-5, *Commerce Energy of Ohio, Inc., dba Just Energy*, Case No. 13-928-EL-ACP, Finding and Order (December 18, 2013) at 2-4, and *Direct Energy Services, LLC*, Case No. 12-1233-EL-ACP, Finding and Order (December 11, 2013) at 5-6.

- (8) With respect to the instant case, ENCOA's motion should be granted for any projections shown in Exhibit A of its AEPS report, and this information should remain under seal in the Commission's Docketing Division for a 24-month period from the date of this Entry.
- (9) 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 24 months. ENCOA should note that any motion to extend such period of confidential treatment should 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 further notice.
- (10) Upon review of ENCOA's AEPS report, as well as Staff's findings and recommendations, the Commission finds that, as ENCOA had no retail electric sales in 2012, the Company did not have any 2012 AEPS compliance obligations. Accordingly, the Company's AEPS report for 2012 should be accepted as filed. The Commission also directs that, for any future compliance years, ENCOA should 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.

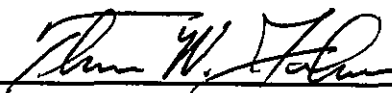
It is, therefore,

ORDERED, That ENCOA's AEPS report for 2012 be accepted as filed. It is, further,

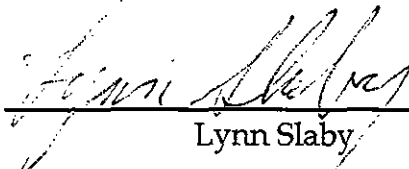
ORDERED, That ENCOA's motion for protective order is granted with respect to the projected data shown in Exhibit A of its AEPS report, and such information shall remain under seal in the Docketing Division for a 24-month period. It is, further,


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

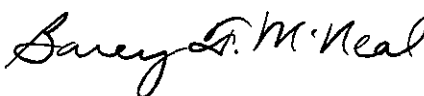

M. Beth Trombold


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JAN 14 2015


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Barcy F. McNeal
Secretary