

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy)
Portfolio Status Report for 2013 of) Case No. 14-646-EL-ACP
Independence Energy Group, LLC.)

FINDING AND ORDER

The Commission finds:

- (1) Independence Energy Group, LLC (Independence 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).¹ The specific renewable compliance obligations for 2013 are 2.00 percent (which includes the solar requirement) and 0.09 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 megawatt hour (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).

¹ The Commission notes that, for future reports, Sub.S.B. No. 310 of the 130th General Assembly, which became effective September 12, 2014, has amended R.C. 4928.64 and 4928.65 to, inter alia, eliminate the in-state renewable benchmarks and advanced energy component, freeze renewable energy benchmarks for 2015 and 2016, and allow an alternative sales baseline calculation for determining compliance.

- (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 15, 2014, Independence filed its 2013 AEPS report, in which it states that the Company had no electric sales in Ohio during 2010 and 2011, and that its sales in 2012 were 253 MWh. Rather than rely on its 2012 sales volume to determine its baseline, Independence proposes a baseline of 3,768 MWh, which is its actual retail electric sales for 2013. In addition, Independence filed a motion for protective order pursuant to Ohio Adm.Code 4901-1-24, regarding its ten-year renewable energy forecast on the third page of its report. Independence asserts that this forecast is proprietary information, the public disclosure of which would jeopardize the Company's ability to compete in Ohio's retail energy market.
- (5) 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 as defined by R.C. 1333.61(D). 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, and has identified six factors for analyzing trade secret claims. See, *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399, 732 N.E.2d 373

(2000), and *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997). 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 that active steps were taken 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).

In applying the statutory requirements and related case law to AEPS reports, the Commission has held that motions for protective orders 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 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 (Dec. 18, 2013) at 3-5, *Commerce Energy of Ohio, Inc., dba Just Energy*, Case No. 13-928-EL-ACP, Finding and Order (Dec. 18, 2013) at 2-4, and *Direct Energy Services, LLC*, Case No. 12-1233-EL-ACP, Finding and Order (Dec. 11, 2013) at 5-6.

- (6) With respect to the instant case, Independence's motion should be granted for the projected renewable energy forecast data shown on the third page 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 Order. Independence should note that, pursuant to Ohio Adm.Code 4901:1-24(F), 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.
- (7) On January 26, 2015, Staff filed its review and recommendations for Independence's AEPS report. Staff reports that Independence is an electric services company in the state of Ohio, and thus had an AEPS obligation for 2013. Staff determined that, because the Company had no Ohio electric sales in 2010 or 2011, and only began serving customers in 2012, its baseline for 2013 compliance should correspond to its actual 2012 sales of 253 MWh, as opposed

to its actual 2013 sales. Using this baseline, Staff reports that Independence has satisfied its total solar and non-solar obligations, as well as in-state solar and non-solar requirements, for 2013, and that the RECs the Company transferred to its Generation Attribute Tracking System (GATS) reserve subaccount were sourced from generating facilities certified by the Commission and appropriately associated with electricity generated between August 1, 2008, and December 31, 2013. Staff notes that the Company retired RECs and S-RECs based on its 2013 actual sales, rather than its 2012 sales, and consequently retired more RECs and S-RECs than necessary to satisfy its 2013 compliance obligations. Accordingly, Staff recommends that the Company, Staff, and GATS representatives coordinate to adjust the quantity of RECs and S-RECs transferred to the reserve subaccount for 2013 compliance purposes so that the quantity transferred matches the Company's compliance obligation as determined herein.

- (8) Upon review of Independence's AEPS report, as well as Staff's findings and recommendations, we find that the Company's AEPS compliance obligations for 2013 be based upon Independence's actual 2012 sales, and that the Company has met its compliance obligations for 2013. Further, Independence is directed to comply with Staff's recommendations for adjustments to its reserve subaccount for 2013 compliance, as discussed above. The Commission also directs that, for any future compliance years, Independence 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,

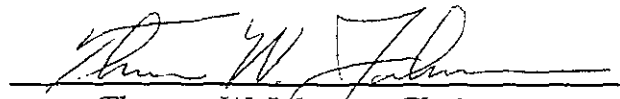
ORDERED, That Independence's motion for protective order be granted, and such information shall remain under seal in the Docketing Division for a 24-month period. It is, further,


ORDERED, That Independence's AEPS compliance obligations for 2013 be based upon its actual 2012 sales consistent with Staff's recommendations. It is, further,

ORDERED, That Independence be found to have met its AEPS compliance obligations for 2013. 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

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Barcy F. McNeal
Secretary