

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy )  
Portfolio Status Report for 2013 of Linde ) Case No. 14-473-EL-ACP  
Energy Services, Inc. )

FINDING AND ORDER

The Commission finds:

- (1) Linde Energy Services, Inc. (Linde 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).<sup>1</sup> 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).
- (3) Ohio Adm.Code 4901:1-40-05(A) requires each electric services company to annually file by April 15 an annual

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<sup>1</sup> 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.

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 March 27, 2014, Linde 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 not for a complete year. Rather than rely on its 2012 sales volume to determine its baseline, Linde proposes a baseline of 63,083 MWh, which is its actual retail electric sales for 2013. In addition, Linde filed a motion for protective order pursuant to Ohio Adm.Code 4901-1-24, regarding the following tables in its AEPS report: Table 1, its 2013 renewable energy benchmark; Table 2, its 2013 renewable energy compliance efforts; and Table 3, its renewable energy forecast. Linde asserts that the information contained in Tables 1, 2, and 3 is competitively sensitive and highly proprietary, and that public disclosure of such information to competitors would jeopardize its business position and ability to compete.
- (5) On November 21, 2014, Staff filed its review and recommendations for Linde's AEPS report. Staff states that the Company is an electric services company in the state of Ohio and, thus, had an AEPS obligation for 2013. Staff determined that because Linde 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 2012 sales, i.e. 3,407 MWh. Staff also reports that Linde has satisfied its total solar and non-solar obligation, as well as the specific minimum in-state solar and non-solar requirement, for 2013. Finally, Staff states that Linde has transferred RECs and SRECs, which were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated between

August 1, 2008, and December 31, 2013, to its Generation Attribute Tracking System (GATS) reserve subaccount for Ohio compliance purposes. Accordingly, Staff recommends that because Linde retired more RECs and SRECs than necessary to satisfy its 2013 AEPS compliance obligations, Linde, Staff, and GATS representatives coordinate to adjust the quantity of RECs and SRECs transferred to the reserve subaccount for 2013 compliance purposes, so that the quantity transferred will match Linde's compliance obligation.

- (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, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." 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*, citing *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-135, 454 N.E.2d 588, 592 (8<sup>th</sup> 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 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.
- (8) With respect to the instant case, Linde's motion should be granted for any projections shown in Table 3 of its AEPS report, which concerns projected renewable energy forecast data, and this information should remain under seal in the Commission's Docketing Division for a 24-month period from the date of this Finding and Order. However, Linde's motion should be denied for Tables 1 and 2 of its AEPs report, which concern its 2013 renewable energy benchmark

and its 2013 renewable energy compliance efforts, respectively.

- (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. Linde 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 Linde's AEPS report, as well as Staff's findings and recommendations, the Commission finds that the Company's AEPS compliance obligations for 2013 should be based upon Linde's actual 2012 sales, and that the Company has met its compliance obligations for 2013. Further, Linde 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, Linde 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 the Company's AEPS compliance obligations for 2013 be based upon its actual 2012 sales, and that Linde be found to have met such compliance obligations for 2013. It is, further,

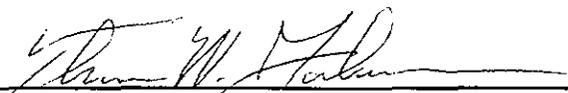
ORDERED, That Linde's AEPS report for 2013 be modified pursuant to Staff's recommendations. It is, further,

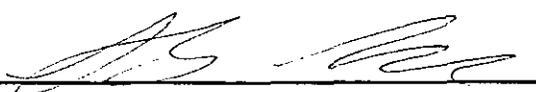
ORDERED, That Linde's motion for protective order is granted with respect to Table 3 of its AEPS report, regarding its renewable energy forecast, and such information shall remain under seal in the Docketing Division for a 24-month period. It is, further,

ORDERED, That Linde's motion for protective order is denied for Tables 1 and 2 of its AEPs report, which concern its 2013 renewable energy benchmark and its 2013 renewable energy compliance efforts. It is, further,

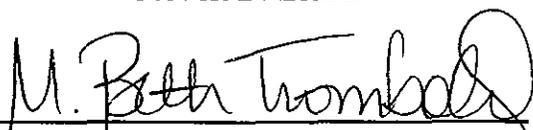
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

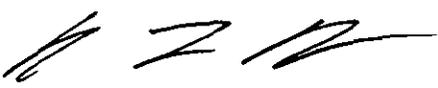
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Thomas W. Johnson, Chairman

  
Steven D. Lesser

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JML/RMB/sc

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Barcy F. McNeal  
Secretary

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