

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE RENEWABLE
PORTFOLIO STANDARD STATUS REPORT
OF OHIO POWER COMPANY FOR THE 2012
COMPLIANCE YEAR.

CASE NO. 13-880-EL-ACP

IN THE MATTER OF THE RENEWABLE
PORTFOLIO STANDARD STATUS REPORT
OF OHIO POWER COMPANY FOR THE 2013
COMPLIANCE YEAR.

CASE NO. 14-520-EL-ACP

FINDING AND ORDER

Entered in the Journal on May 22, 2019

I. SUMMARY

{¶ 1} The Commission finds that Ohio Power Company has satisfied its renewable portfolio standard compliance obligations for the 2012 and 2013 reporting periods.

II. APPLICABLE LAW

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or Company) is a public utility, as defined in R.C. 4905.02, and as such, AEP Ohio is subject to the jurisdiction of this Commission.¹

{¶ 3} R.C. 4928.64(B) establishes benchmarks for EDUs to acquire a portion of their electricity supply for its standard service offer from renewable energy resources. The statute provides that the baseline for determining an EDU's compliance with the benchmarks shall be the average of such total kilowatt hours that the utility sold in the preceding three calendar years, except that the Commission may reduce the EDU's baseline to adjust for new economic growth in the EDU's certified territory. Specifically, the statute requires that, for 2012, 1.5 percent of the EDU's electricity supply for its standard service offer in Ohio must come from alternative energy resources (overall renewable energy resources benchmark), including .060 percent from solar energy resources (SER), half of which must

¹ All references to the Revised Code and the Ohio Administrative Code in this Finding and Order are to the version in effect at the time AEP Ohio filed its renewable portfolio standards reports.

be met with resources located within Ohio (in-state SER benchmark). The overall renewable energy resources benchmark increases to 2.0 percent for 2013, including .090 percent from SER, half of which must be met with resources located within Ohio.

{¶ 4} R.C. 4928.645 provides that an EDU 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 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).

{¶ 5} Ohio Adm.Code 4901:1-40-05(A) requires each EDU to annually file, by April 15, a renewable portfolio standard (RPS) compliance status report (RPS report), unless otherwise ordered by the Commission. The RPS 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 of the company's filing and the records of the applicable attribute tracking system to ensure that RECs were sourced from generating facilities certified by the Commission and were appropriately associated with electricity generated for the compliance period.

{¶ 6} Further, Ohio Adm.Code 4901:1-40-03(B)(3) provides that an electric utility may file an application requesting a reduced baseline to reflect new economic growth in its service area. The rule requires that any such application include a justification indicating why timely compliance based on the unadjusted baseline is not feasible, a schedule for achieving compliance based on its unadjusted baseline, quantification of a new change in the rate of economic growth, and a methodology for measuring economic activity, including objective measurement parameters and quantification methodologies.

III. PROCEDURAL HISTORY

{¶ 7} AEP Ohio timely filed its annual RPS reports for the 2012 and 2013 reporting periods in the respective above-noted cases.

{¶ 8} On February 20, 2019, in Case No. 14-559-EL-ACP, the Commission granted AEP Ohio's application to adjust the Company's baselines for reporting periods 2012 and 2013, as used to determine its RPS benchmarks. *In re Ohio Power Co.*, Case No. 14-559-EL-ACP, Finding and Order (Feb. 20, 2019).

{¶ 9} On March 22, 2019, in the above-captioned cases, Staff filed its report finding that AEP Ohio accurately calculated its RPS compliance obligations, and transferred and retired sufficient RECs and SRECs to meet its compliance obligations for the 2012 and 2013 reporting periods. Staff also recommends that, for future compliance years in which AEP Ohio is utilizing the PJM Environmental Information Services Generation Attribute Tracking System (GATS) to demonstrate its Ohio compliance efforts, the Company 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 Ohio annual RPS report with the Commission.

{¶ 10} No comments or objections to the Company's 2012 or 2013 RPS reports or Staff's recommendations have been filed by any party.

IV. DISCUSSION

{¶ 11} Upon review of the Company's RPS reports, we adopt Staff's recommendations and find that AEP Ohio has met its RPS compliance obligations for 2012 and 2013.

{¶ 12} AEP Ohio also filed motions for protective order on April 15, 2013, and April 15, 2014, respectively, in the above-noted dockets. 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 Title 49 of the Revised Code. 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).

{¶ 13} Similarly, Ohio Adm.Code 4901-1-24 allows the Commission to issue 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.”

{¶ 14} 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).

{¶ 15} The Commission has reviewed the information covered by AEP Ohio’s motions for protective order, and the memoranda in support. 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,² the Commission finds that the redacted information contained in AEP Ohio’s 2012 and 2013 RPS reports constitutes trade secret information. Release of this information is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49

² 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).

of the Revised Code. Therefore, the Commission finds that AEP Ohio's motions for protective order are reasonable and should be granted.

{¶ 16} 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. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Finding and Order, or until May 22, 2021. Until that date, the docketing division should maintain, under seal, the information filed confidentially in AEP Ohio's 2012 and 2013 RPS reports in these proceedings.

{¶ 17} Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If AEP Ohio wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to AEP Ohio.

V. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That AEP Ohio's RPS reports for 2012 and 2013 be accepted as filed. It is, further,

{¶ 20} ORDERED, That AEP Ohio comply with Staff's recommendations with respect to future RPS report filings. It is, further,

{¶ 21} ORDERED, That AEP Ohio's motions for protective order be granted. It is, further,

{¶ 22} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by AEP Ohio on April 15, 2013, and April 15, 2014, for a period ending 24 months from the date of this Finding and Order. It is, further,

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

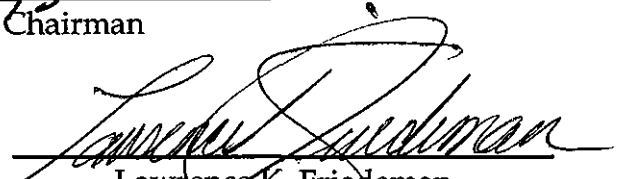
THE PUBLIC UTILITIES COMMISSION OF OHIO



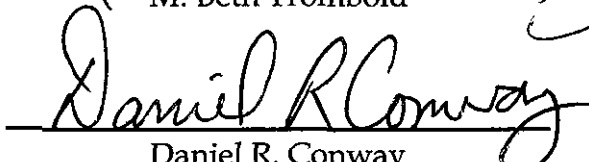
Sam Randazzo, Chairman




M. Beth Trombold



Lawrence K. Friedeman



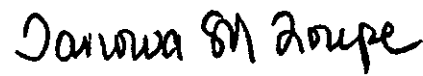
Daniel R. Conway



Dennis P. Deters

GNS/hac

Entered in the Journal
MAY 22 2019



Tanowa M. Troupe
Secretary