

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of South )  
Point Biomass Generation Plant (South )  
Point Power) for Certification as an ) Case No. 09-1043-EL-REN  
Eligible Ohio Renewable Energy )  
Resource Generating Facility. )

FINDING AND ORDER

The Commission finds:

- (1) On November 6, 2009, South Point Biomass Generation Plant (South Point Power) filed an application for certification as an eligible Ohio renewable energy resource generating facility. In its application, South Point Power proposes to use biomass energy from wood waste as its renewable energy resource.
- (2) On December 30, 2009, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene and comments. On January 6, 2010, and January 14, 2010, the Ohio Environmental Council (OEC), and the Sierra Club of Ohio (Sierra Club) filed motions to intervene. On February 17, 2010, South Point Power filed a reply, stating that it did not oppose the interventions. Because South Point Power's application was filed before the effective date of Rule 4901:1-40-04(F)(1), Ohio Administrative Code (O.A.C.), which requires intervention within twenty days after the filing of an application, the Commission finds that the motions for intervention are reasonable and should be granted.
- (3) On February 19, 2010, and April 9, 2010, OEC filed comments and amended comments regarding South Point Power's application. In both filings, OEC expressed its support for certification of South Point Power's facility.
- (4) On January 15, 2010, and March 12, 2010, South Point Power filed correspondence in response to Staff data requests. On March 12, 2010, South Point Power filed correspondence, which details South Point Power's long-term strategy for procuring biomass energy resources, under seal, and filed a corresponding motion for a protective order, pursuant to Rule 4901-1-24(D), O.A.C., asserting that the information is trade secret.

- (5) In support of its motion for protective order, South Point Power asserts that its March 12, 2010 correspondence contains confidential, proprietary, and trade secret information that is not generally known or available to the public. According to South Point Power, the March 12, 2010 correspondence contains information regarding the source of the biomass fuel for South Point Power's project, and that public disclosure of this information would give South Point Power's competitors an undue competitive advantage and would jeopardize South Point Power's ability to compete in the market.
- (6) The Commission finds that South Point Power's motion for protective order is reasonable with regard to its March 12, 2010 correspondence and should be granted.
- (7) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, a protective order shall automatically expire 18 months after the date of its issuance, and that such information may then be included in the public record of the proceeding. Therefore, confidential treatment shall be afforded to the March 12, 2010 correspondence for a period ending 18 months from the issuance of this order. Until that date, the docketing division should maintain, under seal, South Point Power's March 12, 2010 correspondence.
- (8) Consistent with Sections 4928.64 and 4928.65, Revised Code, in order to qualify as a certified eligible Ohio renewable energy resource generating facility, a facility must demonstrate in its application that it has satisfied all of the following criteria:
  - (a) The generation produced by the renewable energy resource generating facility can be shown to be deliverable into the state of Ohio, pursuant to Section 4928.64(B)(3), Revised Code.
  - (b) The resource to be utilized in the generating facility is recognized as a renewable energy resource pursuant to Sections 4928.64(A)(1) and 4928.01(A)(35), Revised Code, or a new technology that may be classified by the Commission as a renewable energy resource pursuant to Section 4928.64(A)(2), Revised Code.

- (c) The facility must satisfy the applicable placed-in-service date, delineated in Section 4928.64(A)(1), Revised Code.
- (9) South Point Power submitted for certification a planned 200 MW generating unit, located at 100 Collins Road, South Point, Ohio 45680. South Point Power explains that its facility will be located on a 50-acre tract that is part of a larger Superfund<sup>1</sup> site, with a long history of industrial activity including cogeneration. While South Point Power will utilize some of the existing site infrastructure, it also plans to install new boilers, environmental emission-control equipment, and electric generators.
- (10) The application states that South Point Power will be a distributed generated facility, interconnected without net metering with the Ohio Power Company, a subsidiary of American Electric Power. The application explains that the facility is located within the geographic area of PJM Interconnection, LLC. Based upon the application, and the facility's location in Ohio, the electricity generated from the South Point Power facility will be deliverable into Ohio. Accordingly, the Commission finds that the application satisfies the first criterion.
- (11) South Point Power plans to combust 100 percent wood waste in its facility, collected from electric transmission line right-of-way clearing, forest clearing waste, and lumber mill waste. South Point Power states that, in the Ohio, Kentucky, and West Virginia region, the logging and forestry products industries, as well as tree trimming and coal mining operations, produce abundant available wood waste residue for which there is little alternative use. South Point Power asserts that, absent its project, this wood waste would likely end up in landfills where it would generate undesirable methane fugitive gases, be burned without emission controls, or be otherwise discarded.

OCC argues that the Commission should not certify a combustion facility, like South Point Power, as a renewable energy resource generating facility until the facility can demonstrate that it has sustainable access to the fuel necessary

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<sup>1</sup> Superfund refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9611 (1990).

to produce the renewable energy. OCC raises the concern that, if the renewable material that South Point Power proposes to use is unavailable, consumers could incur costs for plant modifications without benefitting from the creation of renewable energy. South Point Power responds that, with regard to its facility, OCC's concern about cost impacts to consumers is misplaced. South Point Power notes that its facility, which has not yet been constructed, will not be dedicated to the public, nor certificated as an electric utility facility. Instead, South Point Power plans on selling the electricity it produces on the wholesale market. Thus, the risk that the supply of fuel will prove insufficient falls on South Point Power's owners, not consumers. South Point Power also argues that it fully addressed OCC's request that South Point Power identify its source of biomass materials through its January 15, 2010 response to Staff data requests.

The Commission agrees with South Point Power. OCC's concern about potential cost impacts upon consumers is unfounded in this case. Since South Point Power's facility is not a public utility, and, thus, does not receive ratepayer funding, there is no financial risk to ratepayers if the facility is unable to obtain an adequate fuel supply. Further, an applicant seeking certification as a renewable energy resource generating facility is required to demonstrate that the type of fuel used in the facility to generate renewable energy qualifies as a renewable resource. Based on the circumstances of this case, the Commission finds that, as with applications for certification of wind and solar resources, it is not necessary here for the Commission to make a judgment about issues pertaining to the availability of the renewable resource.

Biomass energy is specifically recognized as a renewable resource pursuant to Section 4928.01(A)(35), Revised Code. The biomass energy materials South Point Power proposes to use, specifically, wood waste, meet the definition of biomass energy contained in Rule 4901:1-40-01(E), O.A.C. Therefore, the Commission finds that the second criterion is satisfied.

- (12) South Point Power further indicates in its application that the projected placed-in-service date for its system is September 30, 2012, which satisfies the requirement of Section 4928.64(A)(1), Revised Code. As such, the Commission finds that South Point Power meets the third criterion.

- (13) Given that South Point Power's application demonstrates that its facility satisfies the requisite statutory criteria to become certified as an eligible Ohio renewable energy resource generating facility, as well as the Commission's rules, the Commission finds that South Point Power's application should be approved.
- (14) In addition to satisfying the above-cited criteria, Section 4928.65, Revised Code, requires a renewable energy resource generating facility to be registered with an approved attribute tracking system, such as the Generation Attribute Tracking System (GATS), or the Midwest Renewable Energy Tracking System (M-RETS), for the facility's renewable energy credits to be used for compliance with Ohio's alternative energy portfolio standards. South Point Power indicated in its application that it intends to register with GATS.
- (15) South Point Power is hereby issued certification number 10-BIO-OH-GATS-0156 as an eligible Ohio renewable energy resource generating facility. Within 30 days of its facility becoming operational, South Point Power must file notification with the Commission that discloses any changes to the information provided in the initial application, or additional information that might not have been available at the time of the initial filing. Additionally, in the event of any substantive changes in the facility's operational characteristics, South Point Power must notify the Commission within 30 days of such changes. Failure to do so may result in revocation of its certification.

It is, therefore,

ORDERED, That the motions to intervene filed by OCC, the Sierra Club, and OEC be granted in accordance with finding (2). It is, further,

ORDERED, That the motion for protective order filed by South Point Power be granted with regard to the information contained in South Point Power's March 12, 2010 correspondence. It is, further,

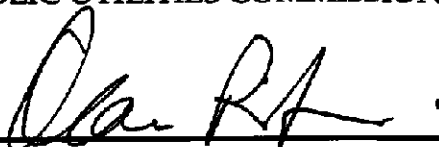
ORDERED, That the Commission's docketing division maintain, under seal, South Point Power's unredacted March 12, 2010 correspondence, for a period of 18 months from the date of issuance of this order. It is, further,

ORDERED, That South Point Power's application for certification as an eligible Ohio renewable energy resource generating facility be granted as set forth herein. It is, further,

ORDERED, That South Point Power be issued certification number 10-BIO-OH-GATS-0156 in accordance with finding (15). 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

  
Alan R. Schriber, Chairman

  
Paul A. Centolella

  
Valerie A. Lemmie

  
Steven D. Lesser

  
Cheryl L. Roberto

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Entered in the Journal

**MAY 19 2010**



Renee J. Jenkins  
Secretary