BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Killen Generating Station for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility.	))))	Case No. 09-891-EL-REN
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ENTRY ON REHEARING

The Commission finds:

(1) On October 1, 2009, Killen Generating Station (Killen) filed two applications for certification as an eligible Ohio renewable energy resource generating facility. Both applications were amended on October 29, 2009, and supplements to each application were filed on December 30, 2009, and March 12, 2009, in response to Staff interrogatories. In Case No. 09-891-EL-REN, Killen seeks certification for using wood cellulose pellets as a renewable energy resource, and in Case No. 09-892-EL-REN, Killen seeks certification for using biodiesel as a renewable energy resource. The Killen facility is co-owned by The Dayton Power and Light Company (DP&L) and Duke Energy Ohio, Inc., and is operated by DP&L.

(2) By finding and order issued on April 6, 2010, the Commission approved Killen's applications and issued Killen certification number 10-BIO-OH-GATS-0106. Noting that the renewable energy created by the two renewable energy resources will be created by the same generating unit, the Commission found that only one certification as an eligible Ohio renewable energy resource generating facility was required. The finding and order also granted the motions to intervene filed by the Office of the Ohio Consumers' Counsel (OCC) and the Ohio Environmental Council (OEC).

(3) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in the proceeding by filing an application within 30 days after the entry of the order upon the journal of the Commission.

(4) On May 6, 2010, OCC and OEC filed an application for rehearing. DP&L filed a memorandum contra on May 17, 2010.

(5) In their application for rehearing, OCC and OEC submit that the Commission's April 6, 2010, finding and order is unreasonable and unlawful. OCC and OEC first argue that Killen should not have been certified as an Ohio renewable energy resource generating facility because the resource it uses does not satisfy the definition of a renewable energy resource under Section 4928.64, Revised Code. OCC and OEC complain that the Commission did not require Killen to demonstrate that it has a source of renewable fuel, nor that it could produce energy from whatever source of renewable fuel is available (Application for Rehearing at 3). Instead, OCC and OEC maintain that the Commission simply accepted promises by DP&L that it will conduct test burns (Id.). OCC and OEC argue that a combustion turbine facility, like Killen, is not listed in the definition of "renewable energy resource" contained in Section 4928.01(A)(35), Revised Code (Id. at 4). Accordingly, OCC and OEC maintain that certification of a coal-burning combustion generator that does not have an identifiable source of renewable fuel and has never burned renewable fuel is not a "renewable energy resource" as required under the law (Id.).

In response, DP&L initially states that it is "baffled by the radical change in positions taken here by OEC/OCC" (DP&L Memo Contra at 2). DP&L asserts that OCC previously argued, in OCC's reply comments filed on November 9, 2009, that Killen's applications should be approved provided that certification was based on the percentage of output attributable to the use of renewable fuel (Id.). DP&L states that, although the finding and order in this matter was consistent with OCC's recommendation, OCC now argues that the Commission's decision to certify Killen was unlawful (Id.). According to DP&L, OCC and OEC had raised three issues prior to the application for rehearing, each of which has already been

resolved. DP&L states that OCC originally raised questions about the percentage of biomass energy to be used relative to fossil fuel use, to which DP&L responded by refiling its applications on October 29, 2009, specifying the expected percentages of use. DP&L also maintains that issues regarding Killen's in-service date and whether it qualified under Section 4928.65, Revised Code, to earn additional renewable energy credits (RECs), raised by OCC and OEC in their initial and reply comments, were resolved in the Commission's April 6, 2010, finding and order (Id. at 3). DP&L argues that OCC and OEC failed to raise the issues discussed in their application for rehearing in their earlier pleadings (Id.).

With regard to OCC and OEC's argument that Killen should not have been certified because Killen had not previously produced power from renewable fuel, DP&L states that its applications demonstrate that DP&L's plans for using renewable fuel at the Killen facility have advanced far beyond a mere promise to attempt to utilize biomass fuel (Id. at 4). DP&L notes that, as stated in its applications, it has already obtained permits from the Ohio Environmental Protection Agency to conduct test burns, and that the applications included detailed descriptions of the size and characteristics of the biomass fuel, including Btu content and other key parameters (Id.). DP&L also points out that, as discussed in the finding and order, the applications included detailed formulas describing how the amount of electricity generated from each of the wood cellulose pellets and biodiesel would be calculated (Id.). Finally, DP&L notes that since filing the applications, it has conducted test burns of both wood cellulose pellets, comprised of miscanthus grass and wood waste, and biodiesel. DP&L states that it has begun regular use of a biodiesel/diesel fuel blend containing up to 20 percent biodiesel (Id. at 5).

DP&L claims that the theme of OCC and OEC's rehearing request is that biomass energy is not really biomass energy unless that particular fuel has an identified source of supply that is guaranteed to be available over an extended period of time at economically attractive prices and perhaps even locked-up under a long-term contract (Id.). DP&L maintains that this argument errs in several key aspects. DP&L argues that the price of biomass fuel is not relevant in determining

whether it qualifies as a renewable resource (Id. at 6). DP&L also suggests that certification of Killen and other biomass fuel facilities will help promote economic development of renewable resources, as the increased demand for biomass fuels will send market signals to farmers to grow miscanthus grass and to lumber companies and other industries to put additional efforts into collecting wood waste (Id.). Finally, DP&L contends that an automatic, self-enforcing mechanism exists to ensure that, over the long run, RECs are generated by renewable fuels that are economically and sustainably available (Id.). According to DP&L, if test burns show that biomass fuel cannot be used on a consistent basis without creating fuel handling, environmental, repair or maintenance problems, or cannot be obtained economically, there will be little or no future use of the biomass fuel, with a corresponding reduction in the number of RECs generated from that resource (Id. at 6-7). But, DP&L continues, if use of the biomass fuel is not impeded by these problems, then it will be used, resulting in the creation of a significant number of RECs, and the speculative concerns about sustainability raised by OCC and OEC will have been proven false (Id.). DP&L concludes that it is foolish to take the position that no certification should be granted at this time merely because the future is uncertain (Id.).

(6) The Commission finds that OCC and OEC's contention that Killen does not meet the definition of a renewable energy resource lacks merit. Biomass energy is specifically included in the definition of "renewable energy resource" set forth in Section 4928.01(A)(35), Revised Code. The Commission finds that it is the character of the resource, not the character of the facility utilizing the resource, which determines whether a resource qualifies as a "renewable energy resource." The issue of the availability of biomass fuel was already addressed in our original finding and order in this matter. Killen will only generate RECs when it utilizes biomass energy, because the amount of RECs generated are proportionally metered and calculated as a proportion of the electrical output equal to the proportion of the heat input derived from qualified biomass fuels. Accordingly, given that OCC and OEC have not raised any new issues with regard to the definition of a renewable energy resource, we find that rehearing on this issue should be denied.

(7) The Commission also finds that OCC and OEC's argument that Killen did not demonstrate how it will produce energy from biomass fuel is unfounded. The Commission initially notes that DP&L's reply to OCC and OEC's request for rehearing states that not only have test burns been conducted at Killen since the application was filed, but that the facility has also begun to regularly utilize biodiesel. In addition, Killen's applications fully explained the facility's plans to utilize biomass fuel to create renewable energy during and after the test burns. While as of the date of its certification Killen had not yet reported that the test burns had commenced, and thus the record at that time showed that Killen had not yet generated electricity using a renewable energy resource, this fact is not unusual when the Commission considers applications for certification as eligible Ohio renewable energy resource generating facilities. The Commission has previously certified facilities that have not yet begun using a renewable energy resource to generate electricity. See, e.g., *In the Matter of the Application of Wyandot Solar L.L.C. for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-521-EL-REN, Finding and Order (September 9, 2009); *In the Matter of the Application of Crayola Solar for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-664-EL-REN, Finding and Order (October 7, 2009); *In the Matter of the Application of Schmack Biomass-OARDC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-526-EL-REN, Finding and Order (October 15, 2009); and *In the Matter of the Application of the University of Toledo Scott Park Campus PV Facility*, Case No. 09-827-EL-REN, Finding and Order (November 24, 2009). Accordingly, we find that rehearing on this issue should be denied. Since neither argument raised by OCC and OEC in their first assignment of error has merit, OCC and OEC's first assignment of error is denied.

(8) Next, OCC and OEC maintain that the Commission erred because we did not adhere to our decision in *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1,4901:5-3,4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill 221*, Case No. 08-888-EL-ORD (*Green Rules Case*), that the validity of

renewable fuel sources would be considered in certification proceedings (Application for Rehearing at 5-6). In that case, we stated that, "the Commission also conditions the use of forest resources upon sustainable forest management operations. Rule [4901:1-]40-04(E) introduces a certification process in which specific resources or technologies, including consideration of fuel or feedstock as applicable, will be evaluated" (*Green Rules Case*, Finding and Order at 26 (April 15, 2009)). OCC and OEC contend that, when certifying Killen, the Commission did not fulfill its promise to consider "fuel or fuelstock" in the certification process (Application for Rehearing at 6). In the absence of any reason for the change in practice, OCC and OEC argue that our decision to certify Killen is unlawful (Id.).

DP&L responds that the record in this case demonstrates that Killen's application presented, and the Commission considered, the proposed biomass fuel planned for Killen (DP&L Memo Contra at 9). DP&L notes that it responded to two sets of data requests from staff, and argues that the description of the biomass fuels and the discussion about how the output attributable to biomass would be measured in the April 6, 2010, opinion shows that the Commission made appropriate inquiries and evaluated the nature of the biomass fuel (Id.).

(9) The Commission finds that OCC and OEC's second assignment of error is without merit. Our decision to certify Killen included full consideration of the proposed fuel source, as promised by our April 15, 2009, finding and order in the *Green Rules Case*. The Commission finds that OCC and OEC have raised no new issues for our consideration in this assignment of error. Therefore, rehearing on this assignment of error should be denied.

(10) OCC and OEC also argue that the Commission erred in certifying Killen because its applications did not demonstrate that the facility complied with the Ohio Administrative Code (O.A.C.). Referring to the definition of biomass energy found in Rule 4901:1-40-01(E), O.A.C., OCC and OEC maintain that to be eligible to qualify as a renewable energy resource, biomass energy must be available on a renewable basis while also being

a waste product (Application for Rehearing at 6). OCC and OEC contend that Killen has not described with any detail the source of its biomass material (Id. at 7). In addition, OCC and OEC argue that carbon output is one of the criteria that should be considered when ruling on an application for a renewable energy resource generating facility (Id. at 7). OCC and OEC advocate that carbon output resulting from transportation of biomass fuel should also be considered in evaluating an application (Id. at 7-8). In support of their argument, OCC and OEC cite to Rules 4901:1-40-01(F) and 4901:1-40-04(B), O.A.C. (Id. at 7).

DP&L responds that OCC and OEC are attempting to redefine "biomass energy" to require a case-by-case evaluation of whether a particular biomass energy resource will remain available and economical over some undefined, but extended, basis (DP&L Memo Contra at 10). DP&L argues that OCC and OEC's "redefinition" ignores both the statutory definition of biomass energy and the definition provided by Rule 4901:1-40-01(E), O.A.C. (Id.). DP&L further maintains that once the Commission determines that a fuel source qualifies as biomass energy, an applicant has no further obligation to provide, nor the Commission to investigate, details about the procurement process, fuel supply contracts and cost issues, carbon output or cumulative impacts of multiple potential biomass projects (Id. at 10-11). DP&L argues that OCC and OEC misapply the Commission's regulations for alternative energy resources by attempting to import those requirements into the certification process for renewable energy resource generating facilities (Id.). DP&L suggests that if such considerations are found to be relevant for biomass energy, they should be considered for all sources of renewable energy, such as wind mills and solar power (Id. at 12).

(11) The Commission finds that there is no requirement for an applicant for certification as an eligible Ohio renewable energy generating facility to provide the level of information desired by OCC and OEC. The applicant bears the responsibility of demonstrating that its proposed fuel source qualifies as a renewable resource, including that the biomass energy is derived from organic material available on a renewable basis, as required by Rule 4901:1-40-01(E), O.A.C. Killen's application

satisfied that requirement by specifying that it plans on using torrefied biomass, raw wood chips, sawdust, wood pellets, herbaceous crops, and/or agricultural waste. Additionally, contrary to the assertions of OCC and OEC, Rule 4901:1-40-01(E), O.A.C., permits, but does not require, that all organic material be a waste product. The Commission further finds that the argument that carbon output must be considered when evaluating an application for certification lacks merit. The Commission notes that OCC and OEC's reliance on Rule 4901:1-40-01(F), O.A.C., which defines clean coal technology, and Rule 4901:1-40-04(B), O.A.C., which discusses the advanced energy resource benchmarks, is misplaced, as these rules are taken out of context. The relevant statutes and rules do not state that carbon output is to be considered when evaluating a certification application. Therefore, we find that rehearing on this assignment of error should be denied.

(12) Next, OCC and OEC argue that the aggregate amount of large biomass proposals require the Commission to conduct a thorough review of each proposal, which must include each applicant's plan for a sustainable source of fuel (Application for Rehearing at 8). OCC and OEC list a number of other biomass facilities that have applied for certification, and conclude that the proposals total an estimated 1700 megawatts (MWs) of generation capacity (Id. at 8-9). According to OCC and OEC, the combination of a cursory approval process, which employs an incomplete review of a certification application, coupled with the lack of an aggregate view of similar types of proposals, does not foster a serious determination of whether an applicant is ready for certification as a renewable energy generating facility (Id. at 9). OCC and OEC raise the concern that the cumulative impact of the biomass facilities seeking certification on the forest ecosystems of Ohio and other states could be devastating (Id.).

DP&L retorts that OCC and OEC's concerns are misplaced and overwrought (DP&L Memo Contra at 12). Referring to the list of potential biomass facilities provided by OCC and OEC, DP&L argues that the fact that a certification application has been filed, or even approved, does not mean that any of the conversions will actually occur (Id.). DP&L notes that before any conversion to 100 percent biomass usage could occur, new

environmental permits would need to be obtained and substantial physical modifications would likely be required (Id.). Finally, DP&L states that OCC and OEC's concerns about collective impacts are better addressed by the General Assembly and/or by agencies responsible for regulating the use of state, federal, and private lands by timber companies (Id. at 13-14).

(13) While cognizant of the concerns raised by OCC and OEC regarding the potential impact upon forest resources, the Commission finds that the argument that the cumulative impact of similar types of applications should be considered when certifying a facility as an eligible Ohio renewable energy resource generating facility is without merit. Each case must be decided on its own merits, based on its own record. As such, rehearing on this assignment of error should be denied.

(14) OCC and OEC additionally request rehearing on the basis that there may be an insufficient quantity of forest residues available to maintain a consistent supply of fuel for Killen and other proposed biomass facilities in Ohio (Application for Rehearing at 10-12). OCC and OEC argue that the amount of forest residues generated in Ohio and surrounding states, including the north central and southeastern regions of the country, will not provide enough biomass fuel for the large number of biomass plants proposed in Ohio, especially given that many other facilities in other states also rely on biomass fuel to generate electricity (Id.). OCC and OEC also argue that mill residues will not provide a viable alternative to woody biomass and forest residues, as mill residues may be cost prohibitive due to transportation issues (Id. at 12-13).

DP&L argues that OCC and OEC's claims about the availability of forest and mill residues are irrelevant in a certification process (DP&L Memo Contra at 13). DP&L contends that the fact that the supply of biomass fuels may be limited does not alter the fact that biomass fuels qualify as renewable resources and, accordingly, that Killen should be able to generate RECs for the portion of Killen's output attributable to its use of biomass fuels (Id.).

(15) The Commission finds that OCC and OEC's argument regarding the capacity of forest residues also lacks merit. Killen has been certified to use biomass energy as its renewable energy resource. Since the definition of biomass energy includes a wide variety of qualifying materials, the fact that one particular type of biomass energy may not be available does not mean that the Commission erred when certifying Killen. As stated previously, the amount of RECs generated by Killen are proportionally metered and calculated as a proportion of the electrical output equal to the proportion of the heat input derived from qualified biomass fuels. Similarly, the Commission finds no merit to OCC and OEC's argument about mill residues, which was improperly raised for the first time on rehearing. Accordingly, we find that rehearing on these assignments of error should be denied.

(16) In its last assignment of error, OCC and OEC argue that a recent Commission entry suspending an application for certification as an eligible renewable energy resource generating facility shows that a utility must provide certain information regarding the source and sustainability of its facility as a pre-requisite to renewable certification (Application for Rehearing at 13). Citing to *In the Matter of the Application of R.E. Burger Units 4 & 5 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-1940-EL-REN, Entry (April 28, 2010) (*Burger Case*), OCC and OEC maintain that an application must contain data regarding the source, sustainability, and carbon output of a facility (Id.).

DP&L responds that OCC and OEC's argument is materially misleading (DP&L Memo Contra at 14). Explaining that the entry OCC and OEC rely upon is a procedural order that tolls the otherwise automatic 60-day approval period, DP&L points out that nothing in the entry indicates the type or extent of any additional information sought by the Commission in order to evaluate the application in that case (Id.). DP&L maintains that it is misleading for OCC and OEC to claim that the entry indicates that a utility must submit information pertaining to the source, sustainability, and carbon output of a proposed renewable energy resource generating facility, when in fact it makes no mention of any of those issues (Id.).

(17) The Commission finds that OCC and OEC's reliance upon the April 28, 2010 entry in the *Burger Case* is unfounded. While the entry does suspend the automatic 60-day approval period for the amended application filed in that case, the entry does not specify what additional information is needed to complete the review of the application in that case. Suspension of the automatic 60-day approval period of an application for certification as an eligible Ohio renewable energy resource generating facility occurs for a variety of reasons. In fact, applications are frequently suspended even though no party has intervened in the proceeding. See, e.g., *In the Matter of the Application of CMTA Properties for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 10-45-EL-REN and *In the Matter of the Application of Bay View Co-Generation Plant for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-1913-EL-REN. Thus, there is no basis to assume, simply because an application was suspended after the filing of comments by an intervenor, that the issues raised in the comments resulted in the suspension. Accordingly, rehearing on this assignment of error should be denied.

(18) Having found that the arguments raised by OCC and OEC in support of their application for rehearing are unsupported, improperly raised, or lack merit, the Commission finds that the application for rehearing should be denied.

It is, therefore,

ORDERED, That the application for rehearing filed by OCC and OEC be denied. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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