

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Bay     )  
Shore Unit 1 for Certification as an     )     Case No. 09-1042-EL-REN  
Eligible Ohio Renewable Energy     )  
Resource Generating Facility.     )

ENTRY ON REHEARING

The Commission finds:

- (1) On November 3, 2009, as amended on November 11, 2009, and as supplemented on January 15, 2010, March 11, 2010, and April 6, 2010, Bay Shore Unit 1 filed an application for certification as an eligible Ohio renewable energy resource generating facility. Bay Shore Unit 1 seeks certification for co-firing wood pellets/briquettes along with petcoke and fuel oil. The application explains that FirstEnergy Generation Corporation, a subsidiary of FirstEnergy Solutions Corporation (FirstEnergy), owns Bay Shore Unit 1.
- (2) By finding and order issued on April 28, 2010, the Commission approved Bay Shore's application and issued Bay Shore Unit 1 certification number 10-BIO-OH-GATS-0129. The finding and order also granted the motions to intervene filed by the Office of the Ohio Consumers' Counsel (OCC), the Sierra Club, the Ohio Environmental Council (OEC), and the Buckeye Forest Council (BFC).
- (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 28, 2010, OCC and OEC filed an application for rehearing. BFC filed a separate application for rehearing on the same day. FirstEnergy filed a memorandum contra to both applications for rehearing on June 7, 2010.
- (5) In its first assignment of error, BFC contends that it was deprived of the opportunity to comment on Bay Shore

Unit 1's application because its motion to intervene was granted at the same time and in the same entry that granted certification to Bay Shore Unit 1 (BFC Application for Rehearing at 5). Since it was not able to comment on the application, BFC requests that the Commission grant rehearing in this matter (Id.).

FirstEnergy responds that nothing prevented BFC from filing comments on Bay Shore Unit 1's application, as Rule 4901:1-40-04(F), Ohio Administrative Code (O.A.C.), states that any interested person may file a motion to intervene and file comments and objections to any application (FirstEnergy Memo Contra at 2). While acknowledging that this rule was not in effect at the time Bay Shore Unit 1's application was filed, FirstEnergy argues that the rule is a clear statement by the Commission that an interested person could file comments, rather than remain silent for months (Id. at 2-3). FirstEnergy also notes that OCC filed comments on the application at the same time as its motion to intervene (Id. at 3). FirstEnergy maintains that BFC's failure to act is not a basis for rehearing (Id.).

- (6) The Commission finds BFC's argument lacks merit. In addition to the fact that Rule 4901:1-40-04(F), O.A.C., allows an interested person to file comments before that person's motion to intervene has been granted, Rule 4901-1-16(H), O.A.C., allows any person who has filed a motion to intervene which is pending to serve and respond to discovery requests. Although BFC's motion to intervene remained pending, it did not prevent BFC from filing comments or otherwise prevent BFC from fully participating in this proceeding. Accordingly, rehearing on this ground is denied.
- (7) In their first assignment of error, OCC and OEC argue the Commission erred in certifying Bay Shore Unit 1 because a combustion turbine facility, like Bay Shore Unit 1, 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. at 5).

In response, FirstEnergy notes that OCC and OEC incorrectly describe Bay Shore Unit 1 as a coal-burning combustion generator when, instead, the facility co-fires petcoke (petroleum coke), not coal, along with biomass (FirstEnergy Memo Contra at 3). FirstEnergy argues that the entire factual underpinning for OCC and OEC's first ground for rehearing is based upon OCC and OEC's understanding of a different application for certification, rather than on the facts in the record in this proceeding (Id. at 3-4). FirstEnergy also maintains that OCC and OEC have misconstrued the controlling statutory provisions (Id. at 4). According to FirstEnergy, power produced by biomass energy is included in the definition of a renewable energy resource provided by Section 4928.01(A)(35), Revised Code (Id.). FirstEnergy also points out that under Rule 4901:1-40-01(E), O.A.C., energy produced from tree crops and wood chips—the same material Bay Shore Unit 1 plans on utilizing—is included in the definition of biomass energy (Id.). Finally, FirstEnergy claims that OCC and OEC's focus upon certification of a combustion turbine misses the point as the Commission's certification relates only to the capability of the facility as a resource to produce renewable energy (Id. at 5). FirstEnergy maintains that since Bay Shore Unit 1, when co-fired with biomass materials, will produce renewable energy, it qualifies as a renewable energy resource facility (Id.).

- (8) The Commission finds that OCC and OEC's contention that Bay Shore Unit 1 does not meet the definition of a renewable energy resource lacks merit.<sup>1</sup> Biomass energy is specifically included in the definition of "renewable energy resource" set forth in Section 4928.01(A)(35), Revised Code. The Commission notes that, in their application for rehearing in this proceeding, as well as their applications for rehearing in *In the Matter of the Application of Conesville Generating Station Unit 3 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-1860-EL-REN, and *In the Matter of the Application of Killen Generating Station for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case Nos. 09-891-EL-REN and 09-892-EL-REN, OCC and OEC have included a definition of renewable

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<sup>1</sup> The Commission notes that Bay Shore Unit 1 is a steam-generating unit, not a combustion turbine, as OCC and OEC maintain.

energy resource which purports to quote from Section 4928.01(A)(35), Revised Code, but which omits several kinds of renewable energy resources specified by the statute, including biomass energy.

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." Our original finding and order in this matter already addressed the issue of the availability of biomass fuel. Bay Shore Unit 1 will only generate renewable energy credits (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. In addition, Bay Shore Unit 1's application fully explained the facility's plans to utilize biomass fuel to create renewable energy during and after the test burns. Accordingly, we find that OCC and OEC's first assignment of error lacks merit and should be denied.

- (9) In their second assignment of error, OCC and OEC maintain that the Commission erred when certifying Bay Shore Unit 1 because we did not consider the validity of the renewable fuel sources proposed for use by the facility (OCC and OEC Application for Rehearing at 5-6). OCC and OEC claim that 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*), mandates that review of an application for certification proposing the use of biomass energy includes an assessment of the sustainability of the proposed resource (*Id.*). In the *Green Rules 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 Bay Shore Unit 1, the Commission did not fulfill its

promise to consider "fuel or feedstock" in the certification process (OCC and OEC Application for Rehearing at 6-7). In the absence of any reason for the change in practice, OCC and OEC argue that our decision to certify Bay Shore Unit 1 is unlawful (Id.).

FirstEnergy responds that OCC and OEC are "doubly wrong" in claiming that the Commission failed to follow its own rule by allegedly failing to consider proposed fuel sources. FirstEnergy states that the discussion referenced by OCC and OEC from the *Green Rules Case* is not a rule, and the Commission did in fact consider the fuel sources proposed by Bay Shore Unit 1 when approving its application (FirstEnergy Memo Contra at 6). FirstEnergy argues that the discussion referenced from the *Green Rules Case* addresses an early draft of a rule that was not adopted by the Commission in that form (Id.) Thus, the "rule" that OCC and OEC claim the Commission failed to follow is not, according to FirstEnergy, a rule at all (Id.). In addition, FirstEnergy maintains that our original opinion and order in this case includes specifics of the biomass fuel source proposed for use by the Bay Shore Unit 1 facility, and thus, demonstrates that the Commission performed the review promised in the *Green Rules Case* (Id.).

- (10) The Commission finds that OCC and OEC's second assignment of error is without merit. Our decision to certify Bay Shore Unit 1 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.
- (11) In their third assignment of error, OCC and OEC argue that the Commission erred in certifying Bay Shore Unit 1 because its application does 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 (OCC and OEC Application for Rehearing at 7). OCC

and OEC contend that Bay Shore Unit 1 has not described with any detail the source of its biomass material (Id. at 7).

As part of their third assignment of error, OCC and OEC also advocate that the Commission should consider carbon output when ruling on an application for a renewable energy resource generating facility, including the carbon output resulting from transportation of biomass fuel (Id. at 8-9). 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.). BFC makes a similar argument in its fourth assignment of error, claiming that Bay Shore Unit 1's proposed biomass firing would generate substantially more carbon dioxide emissions than the coal firing it is intended to replace (BFC Application for Rehearing at 7).

FirstEnergy responds that the determination of the General Assembly that biomass energy qualifies as a renewable energy resource, as codified in Section 4928.01(A)(35), Revised Code, is not qualified by a limitation that sources of biomass energy be carbon-neutral with an attractive emissions profile (FirstEnergy Memo Contra at 8). FirstEnergy additionally notes that tree crops and wood chips—the biomass fuels proposed for use by Bay Shore Unit 1—are both specifically included in the definition of biomass energy provided by Rule 4901:1-40-01(E), O.A.C. (Id. at 8-9). According to FirstEnergy, there is no need for an applicant seeking certification as an eligible Ohio renewable energy resource generating facility for its use of tree crops and/or wood chips to prove that these proposed fuel sources are renewable, because the General Assembly and the Commission have already made that determination (Id. at 9). FirstEnergy argues that the distinction made by the Commission's rules between agricultural crops, tree crops, and wood chips and waste materials as separate sources of biomass energy demonstrates that OCC and OEC's belief that biomass materials are required to be predominantly waste materials is unfounded (Id.).

- (12) 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, OEC, and BFC. 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. Bay Shore Unit 1's application satisfied that requirement by specifying that it plans on using wood pellets and/or briquettes. 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 the Commission should consider carbon output when evaluating a certification application. Therefore, we find that rehearing on OCC and OEC's third assignment of error and BFC's fourth assignment of error should be denied.

- (13) OCC and OEC argue in their fourth assignment of error that the aggregate amount of large biomass proposals requires 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 9). OCC and OEC list a number of other biomass facilities that have applied for certification, and conclude that the proposals total an estimated 2100 megawatts (MWs) of generation capacity (Id. at 9-10). 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 10-11). 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. at 11). BFC raises a similar argument in its third assignment of error, claiming that Bay Shore Unit 1's proposed biomass generation could burn over

one-quarter of Ohio's annual timber harvest each year (BFC Application for Rehearing at 6).

FirstEnergy responds that there is no evidence in the record of this proceeding to support the claims made by OCC and OEC with regard to other pending proposals to use biomass fuels (FirstEnergy Memo Contra at 10). FirstEnergy claims that it is improper for OCC and OEC to seek to augment the record for the first time in an application for rehearing, as the comments submitted by OCC in this proceeding did not make any claims about the aggregate impact of the pending biomass fuel applications (Id.). In addition, FirstEnergy maintains that there is no support in Section 4928.64, Revised Code, or the Commission's rules for rationing renewable energy resource facility certificates based on the number and potential size of biomass projects proposed elsewhere in Ohio and the rest of the United States (Id.). FirstEnergy notes that since Bay Shore Unit 1 is operated by an electric services company competing in numerous retail electric service markets, there is no mechanism to directly recover costs from customers through any rate-making mechanism (Id. at 10-11).

- (14) The Commission finds that the arguments made by OCC, OEC, and BFC regarding the impact of the proposed biomass facilities upon forest ecosystems lack merit. The Commission agrees with FirstEnergy that there is no information in the docket to support the claims made by OCC and OEC about the overall impact of the proposed biomass facilities. In addition, certification has nothing to do with the amount of the renewable energy resource used to create renewable energy. As stated previously, the amount of RECs generated by Bay Shore Unit 1 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. The availability of a renewable energy resource, including whether the resource is economically viable, is not a relevant consideration when evaluating an application for certification. This is particular true when, as in this case, a facility 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 Bay Shore Unit 1. Accordingly, rehearing on OCC and OEC's fourth assignment of error and BFC's third assignment of error should be denied.

- (15) In their fifth assignment of error, OCC and OEC request rehearing on the basis that there may be an insufficient quantity of forest residues available to maintain a consistent supply of fuel for Bay Shore Unit 1 and other proposed biomass facilities in Ohio (OCC and OEC Application for Rehearing at 11-13). 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.*). BFC echoes this argument in its second assignment of error, claiming that the fuel needs of Bay Shore Unit 1 alone would consume 88 percent of Ohio's forest residues. (BFC Application for Rehearing at 5-6). OCC and OEC also argue, in their sixth assignment of error, 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 13-14).

FirstEnergy contends that, apart from a reference by OCC to the "massive" amount of biomass material that Bay Shore Unit 1 would require, none of the evidence regarding the availability of forest and mill residues was introduced into the record of this proceeding (FirstEnergy Application for Rehearing at 11). Accordingly, FirstEnergy argues that it is improper to rely on this information for the first time on rehearing (*Id.*) FirstEnergy additionally contends that the information cited by OCC, OEC, and BFC appears to provide a static, outdated view of the market for biomass materials, which can be reasonably expected to expand as demand increases (*Id.*). Finally, FirstEnergy maintains that historical estimates of forest and mill residues prove nothing about the merits of Bay Shore Unit 1's application (*Id.*).

- (16) The Commission finds that the arguments of OCC, OEC, and BFC regarding the capacity of forest and mill residues are similar to the arguments raised in OCC and OEC's fourth assignment of error and BFC's third assignment of error, and

similarly lack merit. Accordingly, we find that rehearing on OCC and OEC's fifth and sixth assignments of error, and on BFC's second assignment of error, should be denied.

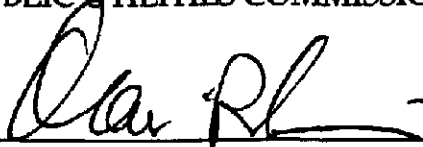
- (17) Having found that the arguments raised by OCC, OEC, and BFC in support of their applications for rehearing are unsupported, or lack merit, the Commission finds that the applications for rehearing should be denied.

It is, therefore,

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

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

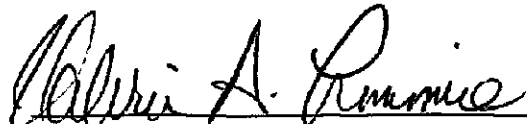
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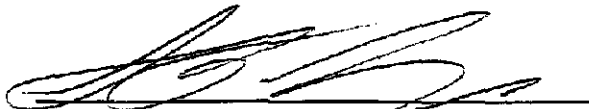
Alan R. Schriber, Chairman



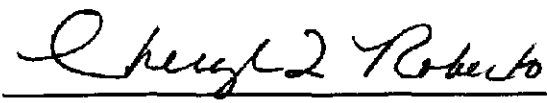
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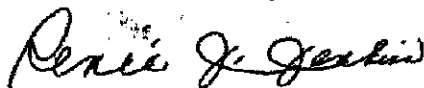


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JUN 16 2010



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