

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Muskingum River Plant for )  
Certification as an Eligible Ohio Renewable ) Case No. 10-911-EL-REN  
Energy Resource Generating Facility. )

ENTRY

The attorney examiner finds:

- (1) On June 29, 2010, Muskingum River Plant (Muskingum) filed an application for certification as an eligible Ohio renewable energy resource generating facility. The Muskingum facility is owned by Ohio Power Company (OPC).
- (2) Pursuant to Rule 4901:1-40-04(F), Ohio Administrative Code (O.A.C.), motions to intervene and comments and objections to an application for certification as a renewable energy generating facility must be filed within 20 days of the date of the filing of the application. In this case, the rule required that motions to intervene and comments and objections be filed by July 19, 2010.
- (3) On July 7, 2010, the Ohio Environmental Council (OEC) filed a timely motion to intervene. The attorney examiner finds that OEC's motion to intervene is reasonable and should be granted.
- (4) The Buckeye Forest Council (BFC) filed a motion to intervene on July 22, 2010, and the Ohio Consumers' Counsel (OCC) filed a motion for leave to file out of time and motion to intervene on July 27, 2010, respectively. BFC filed an amended motion to intervene on July 23, 2010. OPC filed a memorandum contra both motions to intervene on August 6, 2010. OCC filed a reply on August 12, 2010, and BFC filed its reply on August 13, 2010.

BFC and OCC assert that good cause exists for granting them intervention out of time because additional time was needed to properly analyze Muskingum's application. BFC submits that extra time was needed to formulate calculations that would allow for meaningful comment, while OCC contends that the application contained new information not provided in previous biomass applications. OCC states that in *In the Matter*

*of the Application of R.E. Burger Units 4 and 5 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility (Burger), Case No. 09-1940-EL-REN, which according to OCC is the only other biomass application subject to the 20-day deadline imposed by Rule 4901:1-40-04(F), O.A.C., the Commission suspended the application and provided an extended procedural schedule.*

In response to the intervention motions filed by BFC and OCC, OPC notes that, under Rule 4901-1-11(F), O.A.C., an untimely motion to intervene will be granted only under extraordinary circumstances. OPC argues that neither BFC nor OCC have demonstrated that extraordinary circumstances exist in this case. OPC asserts that both interventions were filed substantially late, and maintains that BFC's claim that additional time was required to review the application is not relevant when considering an untimely request for intervention. OPC also contends that granting intervention to BFC and OCC will delay these proceedings.

BFC and OCC reply that allowing them to intervene will not create undue delay, and argues that the Commission has granted late-filed motions to intervene in the past.

The attorney examiner finds that BFC and OCC have not shown that extraordinary circumstances exist for granting their untimely motions to intervene, as required by Rule 4901-1-11(F), O.A.C. While BFC and OCC contend that additional time was needed in order to evaluate Muskingum's application, the proper action to take under those circumstances is to timely request for an extension of the intervention deadline. Although the Commission granted OCC's untimely motion for intervention in the *Burger* case, extraordinary circumstances existed in that case, as Rule 4901:1-40-04, O.A.C., had just gone into effect. Accordingly, the motions to intervene filed by BFC and OCC are denied.

- (5) On July 27, 2010, the Ohio Consumer and Environmental Advocates (OCEA), which consists of OEC, BFC, and OCC, filed a motion for leave to file comments out of time. OPC filed a memorandum contra on August 10, 2010, and OCEA filed a reply on August 17, 2010.

OCEA maintains that, as required by Rule 4901-1-13, O.A.C., good cause exists for granting its motion for leave. OCEA states that it is not filing its comments to object to the application, but rather to address the applicant's commitment to environmental sustainability and forest sustainability protocols. OCEA adds that it is not requesting a hearing, nor does it seek any additional Commission action in this case. Instead, OCEA claims that it offers the comments in order to explore more fully the issue of sustainability.

OPC argues that OCEA improperly relies upon Rule 4901-1-13, O.A.C., because that rule applies to requests for extension made before the deadline to file has passed. OPC contends that filing a request for leave to file late comments after the deadline for filing has passed is not permissible at all, let alone merely for good cause shown. OPC further argues that OCEA fails to demonstrate good cause, as OCEA does not offer any reason to justify its late filing. Finally, OPC maintains that OCEA's comments are merely an attempt to collaterally attack the Commission's prior decision 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.

OCEA replies that OPC misinterprets OCEA's comments, because the comments do not present any objections to Muskingum's application, but instead provide for the Commission's consideration additional details about the impact of a commitment to environmental sustainability upon the use of forest resources as biomass energy.

The attorney examiner finds that OCEA's motion for leave to file comments out of time lacks merit and should be denied. The attorney examiner agrees with OPC that OCEA's reliance upon Rule 4901-1-13, O.A.C., is misplaced, as that rule requires that a motion for an extension of time be filed before the passage of the deadline.

- (6) Pursuant to Rule 4901:1-40-04(F)(2), O.A.C., this application is subject to a 60-day automatic approval process. The rule also provides that the Commission may suspend an application during the 60-day approval process.

- (7) The attorney examiner finds that additional information and investigation is necessary to thoroughly review this application. Therefore, good cause exists to suspend the 60-day automatic approval process for Muskingum's application for certification, in order for the Commission and its staff to further review this matter.

It is, therefore,

ORDERED, That OEC's motion for intervention be granted, in accordance with finding (3). It is, further,


ORDERED, That BFC and OCC's motions for intervention be denied, in accordance with finding (4). It is, further,


ORDERED, That OCEA's motion for leave to file comments out of time be denied, in accordance with finding (5). It is, further,

ORDERED, That the automatic approval process for the application of Muskingum for certification as an eligible Ohio renewable energy resource generating facility be suspended. It is, further,

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

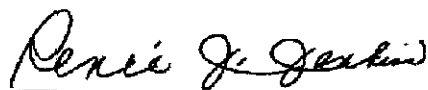
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Henry H. Phillips-Gary  
Attorney Examiner

  
/vrm

Entered in the Journal

AUG 26 2010



Renee J. Jenkins  
Secretary