

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Safe	)	
Harbor Water Power Corporation for	)	Case No. 13-707-EL-REN
Certification as an Eligible Ohio Renewable	)	
Energy Resource Generating Facility.	)	

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**COMMENTS OF EXELON GENERATION COMPANY, LLC**

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**I. Introduction**

On March 20, 2013, Safe Harbor Water Power Corporation (“Safe Harbor”) filed an application with the Public Utilities Commission of Ohio (“Commission”) seeking qualification and certification as an Eligible Ohio Renewable Energy Resource Generating Facility, pursuant to Section 4928.64, Ohio Revised Code. Pursuant to Rule 4901:1-40-04(F)(2), Ohio Administrative Code, the Commission automatically approved Safe Harbor’s application, effective May 20, 2013, and issued Certificate No. 13-HYD-PA-GATS-0402 to Safe Harbor.

After the certificate was issued, Commission Staff sent interrogatory requests to Safe Harbor. Safe Harbor’s responses were filed with the Commission on February 12, 2014. The Staff then issued a Review and Recommendation, suggesting that Safe Harbor’s certificate be revoked on the ground that the facility does not qualify for certification under Section 4928.64(A)(1), Ohio Revised Code. By Entry issued March 4, 2014, the Attorney Examiner ordered Safe Harbor and other interested persons to file comments by March 14, 2014. Exelon Generation Company, LLC (“Exelon Generation”) hereby timely files the following comments in response to that Entry.

## **II. Background**

Exelon Generation owns or controls over 45,000 megawatts of generation, including nuclear, fossil, hydroelectric, solar, landfill gas, and wind generation assets, including two-thirds of the Safe harbor Water Power Corporation. Exelon Generation is the nation's largest nuclear operator, and the ninth largest wind energy generator. Exelon Generation owns the nation's largest urban solar power plant, which is located in Chicago, and owns two of the largest hydroelectric facilities in the eastern United States. Exelon Generation sells wholesale energy and capacity products to municipalities, cooperatives, investor-owned utilities, retail suppliers, retail energy aggregators, merchant participants, power marketers, and major commodity trading houses. Exelon Generation's trading and marketing affiliate, Constellation Power Source Generation, Inc., is the beneficiary of Exelon Generation's share of the output of Safe Harbor.

Exelon Generation submits these comments pursuant to the Attorney Examiner's Entry dated March 4, 2014, regarding the certification of Safe Harbor as a renewable energy resource. Exelon Generation appreciates the opportunity to comment on the Review and Recommendation Submitted on Behalf of The Staff of the Public Utilities Commission of Ohio ("Staff Recommendation"), filed on March 3, 2014. Staff ultimately recommends that the certification of Safe Harbor be revoked, but that the renewable energy credits ("RECs") associated with electricity generated during the time in which the facility was certified be recognized for compliance purposes.<sup>1</sup>

## **III. Requirements of Section 4928.64, Revised Code, for Renewable Energy Resources**

The definition of a Renewable Energy Resource found in Section 4828.01(A)(37), Revised Code, includes hydro electric facilities, new or retrofitted after 1998. Staff noted that "unique circumstances" may exist that would potentially qualify a hydro facility that had been in

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<sup>1</sup> Staff Report p. 3.

operation prior to 1998 as a renewable energy resource. Staff cites qualifying factors such as a facility's extended period of inactivity, significant renovations, and an increase in the facility's capacity factor. (Staff Recommendation, p. 3, citing *In the Matter of the Application of Glen Ferris Development for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 12-2730-EL-REN). Staff concluded that Safe Harbor did not satisfy those unique circumstances.

The criteria for qualifying hydro electric generators placed-in-service prior to January 1, 1998, is that such facilities must have undergone a "modification" or a "retrofit" after January 1, 1998.<sup>2</sup> In its Report, the Staff refers to the statutory standard, but rather than reviewing the post-1998 investments that Safe Harbor made as to whether those investments constituted "modifications" or "retrofits," the Staff questioned whether there were "unique circumstances" including a prior period of inactivity and increased capacity or output.<sup>3</sup> There is no statutory authority for limiting the review to just increased capacity or output. The plain meaning of "modification or retrofit" should include investments that go beyond mere maintenance and improve existing units in any material way. The term "retrofit" is one that the Commission has applied in the past as part of electric utility ratemaking. For example, in 1985, the Commission determined that it was appropriate to include in rate case depreciation expenses \$293 million in investments made by Cleveland Electric Illuminating to retrofit pollution control equipment already in existence at a generating station. The Commission found that material changes to pollution control equipment was indeed a retrofit and thus could be added to rate base. Had the

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<sup>2</sup> Section 4928.64(A)(1), Revised Code, states in part: "As used in sections 4928.64 and 4928.65 of the Revised Code, 'alternative energy resource' means an advanced energy resource or renewable energy resource, as defined in section 4928.01 of the Revised Code that has a placed-in-service date of January 1, 1998, or after; a renewable energy resource created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998." (Emphasis added)

<sup>3</sup> Staff Report p. 3.

determination been made that improvement to the pollution control was maintenance, it would have been expensed.<sup>4</sup>

As noted in the supplemental information provided to Staff in Response to Certificate 13-HYD-PA-GATS-0402, the owners of Safe Harbor invested \$31.6M in the resource during the 2005-2011 timeframe, performing work on three separate units during outages that ranged from approximately 12 months to over 16 months. Although the work performed did not result in an increase in the capacity factor, the absence of those significant investments would have resulted in the reduction of capacity. Most significantly, the work performed was not merely for repair or to maintain the planned life of the units. Rather, the owners made investments that resulted in a 30-year life extension for each of the units into which the investments were made, improving the particular units and the resource, as a whole.

Exelon Generation posits that significant investments in existing resources, the absence of which would result in the resource becoming unavailable, should likewise be considered as a “modification / retrofit,” or “unique circumstance” to use the Staff’s term, which would qualify the resource as a renewable energy resource for certification purposes. Currently, the owners of Safe Harbor are considering significant investment in Units 1 and 2. Without these new investments, there would likely be a significant reduction in the utilization of these units. With the new investments, the units will continue their current utilization, and their useful life will be extended. A resource should qualify as an Ohio certified renewable energy resource if owners make significant investments – beyond mere maintenance or repair – that allow the resource to continue operations or extend the useful life.

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<sup>4</sup> *In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and to Increase Certain of its Filed Schedules Fixing Rates and Charges for Electric Service*, Case Nos. 84-188-EL-AIR et al, Opinion and Order (March 7, 1985).

**IV. The Renewable Energy Credits that were created while the Safe Harbor certificate was lawfully in place should remain valid if the certificate is revoked.**

Exelon Generation concurs with the Staff Recommendation that it is appropriate to recognize, for compliance purposes, the RECs associated with electricity generated during the time the facility was certified. As noted by Staff, such treatment comports with the Commission's earlier clarification regarding its treatment of RECs in the event of a certificate revocation.<sup>5</sup> To invalidate the past renewable energy credits would amount to retroactive rate-making, in conflict with Ohio law.<sup>6</sup>

The RECs already generated were valid under the Commission's certificate as Ohio-certified RECs. Following the Commission's issuance of the certificate, the RECs were appropriately identified as Ohio-certified within the PJM GATS. Parties relied on the resource's status as an Ohio-certified renewable energy resource for compliance purposes, and when selling or buying those RECs within the PJM market. Failure to recognize the RECs already generated would result in substantial confusion in the marketplace and financially harm the parties who relied on the certification in commercial transactions. Parties must be able to rely on a certification.

**V. Conclusion**

Exelon Generation requests that the three units, for which Safe Harbor undertook substantial investment post-1998 and which extended the life of each of the units by 30 years, maintain their certification as Ohio Renewable Energy Resources. In no event should a

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<sup>5</sup> *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 Administrative Code, Pursuant to Amended Substitute Senate Bill No. 221*, Case No. 08-888-EL-ORD, Entry on Rehearing at 35 (June 17, 2009).

<sup>6</sup> See, *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957); *Lucas Cty. Commrs. v. Pub. Util. Comm.*, 80 Ohio St. 3d 344, 348, 686 N.E.2d 501 (1997); *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2014-Ohio-462.

revocation of the certification of the resource or any particular unit thereof result in the loss of  
RECs generated during the time in which the resource was certified.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Comments were served this 14th day of March 2014, via email on the parties listed below.

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Summary: Comments Comments electronically filed by M HOWARD PETRICOFF on behalf of Exelon Generation Company, LLC