BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

(1) On March 20, 2013, the Safe Harbor Water Power Corporation (Safe Harbor) filed an application for certification of its hydroelectric generation facility located on the Susquehanna River in Conestoga, Pennsylvania, as an eligible Ohio renewable energy resource generating facility as defined by R.C. 4928.01(A)(37).

(2) Consistent with R.C. 4928.64 and 4928.65, 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:

The generation produced by the renewable energy resource generating facility can be shown to be deliverable into the state of Ohio, pursuant to R.C. 4928.64(B)(3).

The resource to be utilized in the generating facility is recognized as a renewable energy resource, pursuant to R.C. 4928.64(A)(1) and 4928.01(A)(37), or a new technology that may be classified by the Commission as a renewable energy resource, pursuant to R.C. 4928.64(A)(2).

The facility must have been placed into service in accordance with the applicable date, delineated in R.C. 4928.64(A)(1), which reads as follows:

> 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; or a mercantile customer-sited advanced energy resource or renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under division (A)(2)(c) of section 4928.66 of the Revised Code, * * *.

(3) On June 25, 2013, Certificate No. 13-HYD-PA-GATS-0402 was issued to Safe Harbor pursuant to the 60-day automatic approval process set forth under Ohio Adm.Code 4901:1-40-04(F)(2), with an effective date of May 20, 2013.

(4) On February 12, 2014, Wyatt F. Morrison, Secretary and Treasurer of Safe Harbor, filed detailed responses to Staff data requests regarding the facility.

(5) On March 3, 2014, Staff issued its review and recommendation that the certification of the facility be revoked as the facility fails to qualify under the placed-in service date requirements of R.C. 4928.64(A)(1), as recently construed by the Commission's decision in *In re Glen Ferris Development Facility*, Case No. 12-2730-EL-REN, Finding and Order (December 4, 2013). Staff concludes that the facility does not satisfy the statutory placed in-service requirement as none of the 14 generator units at the Safe Harbor facility have a more recent placed in-service date than 1986. As the application indicates that Safe Harbor is not a mercantile customer, Staff argues that the facility can only qualify if any modifications or retrofits made after 1997 created the renewable energy resource. Staff asserts that, in this case, the facility was clearly a hydroelectric facility prior to any maintenance or retrofit improvements and, therefore, any rehabilitation efforts were for an existing renewable energy resource rather than the creation of a new renewable energy resource. Staff notes the Commission's decision in *In Re Auglaize Hydroelectric Plant,* Case No. 09-1062-EL-REN (Feb. 24, 2010), denying certification of some units of a hydroelectric facility where the hydroelectric generating facility was already in existence prior to January 1, 1998. Staff also references the Commission's more recent *Glen Ferris* decision, which considered such factors as the facility's extended period of

inactivity that coincided with the enactment of R.C. 4928.64, significant renovations undertaken at the facility, and an increase in the facility's capacity factor. Based on the Safe Harbor application and its supplemental information, Staff concluded that the facility does not satisfy the "unique circumstances" identified in *Glen Ferris*. Although Staff acknowledges the substantial rehabilitation activities at Safe Harbor, the capacity factor did not change, nor did the outages generally correspond with the enactment of R.C. 4928.64. Moreover, the outages did not entail a complete shutdown of the facility for multiple years.

(6) Although Staff recommends that the certification of the Safe Harbor facility be revoked, such revocation should only be applied on a prospective basis. Staff believes that any RECs associated with electricity generated during the time the facility was certified should be recognized for Ohio compliance purposes under the alternative energy portfolio standard. Such treatment would be consistent with the Commission's prior consideration of this issue in *In Re Rules for Alternative and Renewable Energy Technologies and Resources*, Case No. 08-888-EL-ORD, Entry on Rehearing (June 17, 2009) at 35.

(7) On March 4, 2014, the attorney examiner issued an entry directing that Safe Harbor and any interested persons file comments to Staff's recommendations by March 14, 2014.

(8) On March 14, 2014, Exelon Generation Company, LLC (Exelon) filed comments on behalf of Safe Harbor objecting to Staff's recommendation that its certification be revoked. Exelon notes that it owns or controls over 45,000 MW of generation, including nuclear, fossil, hydroelectric, solar, landfill gas, and wind generation assets, including two-thirds of Safe Harbor. Exelon's affiliate, Constellation Power Source Generation, Inc., is the beneficiary of Exelon's share of the Safe Harbor output. Exelon observes that R.C. 4828.01(A)(37) defines a "renewable energy resource" to include hydroelectric facilities, new or retrofitted after 1998, and notes that Staff's report concedes that "unique circumstances" may exist that would potentially qualify a hydro facility that had been in operation prior to 1998 as a renewable energy resource. Exelon takes issue with Staff's conclusion that Safe Harbor did not satisfy those unique circumstances. Exelon also argues that the criteria for qualifying hydroelectric generators placed-in-service prior to

1998, is that such facilities must have undergone a "modification" or a "retrofit" after 1997. Exelon criticizes Staff's failure to analyze whether the Safe Harbor post-1998 investments constitute modifications or retrofits. Exelon argues that there is no statutory authority for limiting the review to just increased capacity or output, and that the plain meaning of modification or retrofit should include investments that go beyond mere maintenance and improve existing units in any material way.

In support of its argument, Exelon cites a 1985 Commission decision in *In Re Cleveland Electric Illuminating Company*, Case Nos. 84-188-EL-AIR et al, Opinion and Order (March 7, 1985) that allowed the investment of retrofit pollution control equipment to existing generation to be added to rate base. Exelon notes that the owners of Safe Harbor have invested more than $31 million over the 2005-2011 timeframe in performing work on three separate units during outages that ranged from 12 months to 16 months. Although such investment did not increase generation capacity, Exelon argues that the work performed was not merely for repair or to maintain the planned life of the units, but resulted in a 30-year life extension for each of the units. Exelon posits that significant investments in existing resources, the absence of which would result in the resource becoming unavailable, should be considered a "modification" or "retrofit" or "unique circumstance" that should qualify the resource as a renewable energy resource for certification purposes.

(9) Upon consideration of the application and supplemental filings, Staff's recommendations, and Exelon's comments, we believe that the Safe Harbor post-1998 investments do not constitute modifications or retrofits that created a renewable energy resource within the meaning of R.C. 4928.64(A)(1). The Safe Harbor investments in maintenance that permitted this hydroelectric generation facility created before 1998 to continue to operate can not, without more, transform such facility into a renewable energy resource created after 1998, notwithstanding an increase in the useful life of such facility attributable to such maintenance. We believe this holding is consistent with our prior consideration of these issues in *Auglaize* and *Glen Ferris*. In the instant case, the Safe Harbor facility was not closed in 2008 when the 129th General Assembly enacted Senate Bill No. 221 (SB 221) to create renewable energy requirements under

> R.C. 4928.64. In contrast, the *Glen Ferris* facility had been inactive for five years prior to SB 221, and was extensively retro-fitted after the statute's 1998 dividing line. Accordingly, the certification of Safe Harbor as an eligible Ohio renewable energy resource generating facility will be revoked, effective upon the issuance of this order. Such revocation will not, however, disqualify any RECs associated with electricity generated during the time the facility was certified for Ohio compliance purposes under the alternative energy portfolio standard.

It is, therefore,

ORDERED, That, Certificate No. 13-HYD-PA-GATS-0402 issued to Safe Harbor be revoked. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

RMB/vrm
Entered in the Journal
MAR 26 2014
Barcy F. McNeal

Barcy F. McNeal
Secretary