

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Mother Ann) Case Number: 14-0403-EL-REN
Lee Hydroelectric Station for Certification as an Ohio)
Renewable Energy Resource Generating Facility)

**REVIEW AND RECOMMENDATION
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

CASE HISTORY

On March 19, 2014, Lock 7 Hydro Partners, LLC (Applicant) filed an application with the Public Utilities Commission of Ohio (Commission) for certification of a renewable energy resource facility, the Mother Ann Lee Hydroelectric Station (Facility), located at 1 Shaker Ferry Road, Harrodsburg, KY, 40330. According to the application, the Facility is a three generating unit facility located on the Kentucky River in Harrodsburg, Kentucky, with an aggregate generating capacity of 2.04 megawatts.

On March 25, 2014, an Attorney Examiner Entry suspended the automatic approval of this application. On March 26, 2014, Staff sent the Applicant questions related to the application. The Applicant filed its responses on April 1, 2014. On May 1, 2014, Staff sent the Applicant additional questions, with the Applicant having filed its second set of responses on May 6, 2014.

STAFF REVIEW

Staff's review of an application for the certification of a renewable energy resource facility consists primarily, but not exclusively, of three items: (1) the resource/ technology used at the facility, (2) the deliverability of the facility's electrical output to the state of Ohio, and (3) the facility's placed in-service date.

1) Resource/Technology

The Ohio Revised Code (R.C.) lists the resources/technologies that qualify for eligibility as a renewable energy resource under the state's renewable energy portfolio standard. The statutory definition of a renewable energy resource includes hydroelectric facilities.¹

Staff finds that the Facility satisfies the statutory definition of hydroelectric facility listed in R.C. 4928.01(A)(37). With respect to the eight statutory standards specific to hydroelectric facilities, the Applicant indicated in its application that it has satisfied those specific standards. During its review, Staff found no evidence to the contrary.

¹ R.C. 4928.01(A)(37)

Staff concludes that the Facility satisfies the resource/technology provision of the statute.

2) Deliverability

Output from non-Ohio facilities must be deliverable to the state in order to be eligible.² The Ohio Administrative Code (Ohio Admin.Code) provides further guidance on this topic where it defines “deliverable into this state” as the following: “that the electricity originates from a facility within a state contiguous to Ohio. It may also include electricity originating from other locations, pending a demonstration that the electricity could be physically delivered to the state.”³

Because the Facility is a grid-connected facility located in Kentucky, Staff concludes that this Facility satisfies the deliverability provision of the statute.

3) Placed In-Service Date

The Facility must satisfy one of the statutory provisions pertaining to the placed in-service date,⁴ specifically:

- (1) a placed-in-service date on or after January 1, 1998;
- (2) an in-service date on or after January 1, 1980, if the facility is a run-of-the-river hydroelectric facility;
- (3) 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
- (4) a mercantile customer-sited renewable energy resource that is committed for demand-response, energy efficiency, or peak demand reduction programs.

The Applicant indicated in its application that it is not a mercantile customer. Additionally, due to its location and size, the Facility does not qualify as a run-of-the-river facility.⁵ As such, Staff reviewed the Application for satisfaction of either the first or third placed in-service dates outlined in the statute.

The Applicant indicates that a facility at this location was previously owned by Kentucky Utilities Company (KU). That facility was placed into service in 1927. However, Applicant states that the previous facility, named the Lock No. 7 Project, was retired in 1999.⁶ In 2004, KU submitted to FERC an “Initial Consultation Document in Support of Application License Surrender.” This document included the following conclusion:

Because KU has determined that continued operation of the Lock No. 7 Project is not economically feasible, KU plan [sic] to apply to the FERC to surrender their operational license (FERC License No. 539) for the Lock #7 Project and decommission the generating facility.

² R.C. 4928.64(B)(3)

³ Ohio Admin.Code 4901:1-40-01(I)

⁴ R.C. 4928.64(A)(1)

⁵ R.C. 4928.01(A)(37)(iv) qualifies power produced by a run-of-the-river hydroelectric facility as a renewable energy resource if it is placed in service on or after January 1, 1980, is located within the state of Ohio, relies upon the Ohio River, and operates or is rated to operate at an aggregate capacity of 40 or more megawatts. Since the Facility is located in Kentucky, on the Kentucky River, and has an aggregate generating capacity of 2.04 megawatts, the Facility cannot qualify as a run-of-the-river facility constituting a renewable energy resource.

⁶ Applicant response to Staff Question 2, Initial Set of Staff Questions also indicates that Units 1, 2, and 3 were retired in 1992, 1994, and 1999 respectively.

In 2005, before the license was surrendered or the Lock No. 7 Project decommissioned, the Applicant purchased the Lock No. 7 Project from KU. The FERC license transferred from KU to the Applicant in 2005 as well.⁷ After refurbishments at the site in excess of \$2 million, the Applicant indicates that the three units were returned to service between March 2007 and December 2008.

Considering all of the information in the docket, as well as the relevant statutory language, Staff concludes that the Facility, as it currently exists, should be viewed as having a placed in-service date of December 2008 thereby satisfying the first statutory placed in-service provision. Although the current Facility occupies the same area as the previously existing facility, is operating under a 1992 FERC license, and makes use of much of the same equipment as the previously existing facility, Staff finds the announced retirement of the previous facility, the lengthy period of inactivity, and the extensive rebuilding necessary to make the facility operational, to be sufficient reasons to consider this Facility a new facility.

Of note, Staff also reviewed the Facility for compliance with the third statutory placed in-service provision listed above. Although Staff acknowledges the many facility renovations detailed in the application and responses to Staff interrogatories, consistent with the Commission's decision in Case No. 09-1062-EL-BGN, Staff maintains that this particular section of the statute requires that the modifications create a renewable energy resource that did not previously exist. Staff concludes that the previously existing facility at this location was a hydroelectric facility prior to its retirement, period of inactivity, and extensive renovations. The situation presented in this case is not one in which an existing facility is modified in a way that has caused it to become a renewable energy resource. Therefore, Staff believes the third statutory provision addressing placed in-service date is not applicable to this Facility.

STAFF RECOMMENDATION

Staff recommends that the Commission approve the application for certification of the Mother Ann Lee Hydroelectric Station as a renewable energy resource facility, as the Facility satisfies the statutory requirements.

⁷ FERC issued that license for the Lock No. 7 Project in May 1992 and it is set to expire in April 2022.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/26/2016 11:04:35 AM

in

Case No(s). 14-0403-EL-REN

Summary: Staff Review and Recommendation electronically filed by Mr. Stuart M Siegfried on behalf of PUCO Staff