

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
FOR CERTIFICATION AS AN ELIGIBLE
OHIO RENEWABLE ENERGY RESOURCE
GENERATING FACILITY FOR THE
STURGEON FALLS HYDROELECTRIC
FACILITY.

CASE NO. 21-1051-EL-REN

FINDING AND ORDER

Entered in the Journal on March 23, 2022

I. SUMMARY

{¶ 1} The Commission denies the application to certify the Sturgeon Falls Hydroelectric Facility as an eligible Ohio renewable energy resource generating facility.

II. DISCUSSION

{¶ 2} On October 6, 2021, the City of Norway (Applicant) filed an application on behalf of Sturgeon Falls Hydro (Facility), seeking certification of a small hydroelectric facility as defined in R.C. 4928.01.

{¶ 3} Ohio Adm.Code 4901:1-40-04(D)(2) provides for automatic approval of an application for certification as an eligible Ohio renewable energy resource generating facility unless the Commission suspends the application within 30 days. By Entry filed on October 22, 2021, the attorney examiner suspended the application in the above-captioned case to allow Staff additional time to review the application and obtain additional information from the Applicant.

{¶ 4} On December 9, 2021, the Applicant filed responses to Staff's questions.

{¶ 5} On February 28, 2022, Staff filed a report of its review of the application, ultimately concluding that the Facility failed to satisfy the statutory requirements for certification as a renewable energy facility, and recommending that the application be denied.

{¶ 6} R.C. 4928.64 and 4928.645 contain the renewable energy resource requirements for electric utility and electric services companies providing electric retail generation in Ohio. R.C. 4928.01(A)(37) defines the types of renewable energy resource generating facilities that qualify in meeting the statutory mandates. Pursuant to Ohio Adm.Code 4901:1-40-04(D), any entity that desires to be designated an eligible renewable energy resource generating facility for the state of Ohio shall file an application for certification that demonstrates the facility satisfies the requirements of R.C. 4928.64 and 4928.645.

{¶ 7} Pursuant to R.C. 4928.64 and 4928.645, 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:

- a) 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);
- b) 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); and
- c) The facility must satisfy the applicable placed-in-service date, delineated in R.C. 4928.64(A)(1), which requires that a facility have been placed-in-service on or after January 1, 1998, or have been modified or retrofitted to create a renewable energy resource after January 1, 1998.

{¶ 8} First, pursuant to R.C. 4928.64(B)(3), the Commission considers whether the facility is located in this state or whether the resource can be shown to be deliverable into this state. Moreover, while the Facility crosses the Menominee River along the border between Michigan and Wisconsin, Staff notes that both the Facility's powerhouse and point

of interconnection are located in Michigan. According to Staff, the Facility is also listed as being located in Michigan on the licensing website for the Federal Energy Regulatory Commission. As such, Staff has treated this application as seeking certification of a grid-connected facility located in Norway, Michigan, a state contiguous to Ohio. Staff, therefore, concludes that the Facility's energy is deliverable into this state. The Commission finds that the application satisfies the first criterion as the Facility is located in a state contiguous to Ohio.

{¶ 9} Second, the Commission considers whether the resource to be utilized by the generating facility is recognized as a renewable energy resource by Ohio law. The application seeks certification of a small hydroelectric facility. Under R.C. 4928.01(A)(37)(a)(iv), a small hydroelectric facility that operates, or is rated to operate, at an aggregate capacity of less than 6 megawatts (MW), is recognized as a renewable resource. According to the Applicant, while the Facility's nameplate capacity is 6.44 MW, it operates at a capacity below 6 MW. Staff states that historically, it has viewed "rated to operate" language found in R.C. 4928.01(A)(37)(a)(iv) as referring to a facility's nameplate capacity, which would disqualify the Facility here; however, Staff assigns significance to the fact that the statute states "operates or is rated to operate" which Staff believes allows for a broader interpretation than solely a facility's nameplate capacity. Staff notes that neither the statute nor Commission rules provide clarity as to what it means to operate at an aggregate capacity of less than 6 MW. Staff further notes that it has verified the computations implicit in Applicant's argument that the Facility has operated comparable to a 3.37 MW facility assuming a 100 percent capacity factor, but disagrees with the assumption of a 100 percent capacity factor. Based on Applicant's responses to Staff's questions and data requests, Staff concludes that, based on actual operating data from the Facility, it does not appear that the Facility has been operating at an aggregate capacity of less than 6 MW and, therefore, concludes the Facility does not meet the requirement. We agree with Staff that the plain language of the statute expressly allows for a facility to qualify as a small hydroelectric facility either by exhibiting a nameplate capacity less than the 6 MW threshold or,

alternatively, operating below that threshold. If seeking to qualify under the latter, we also agree that a 100 percent capacity factor should not be assumed when historical data is available and has been produced by the Applicant during the course of Staff's investigation. With this data in hand, not only did Staff demonstrate that the average annual capacity factor over the periods of 2012 to 2020 and 2016 to 2020 fell far below the proposed 100 percent capacity factor of the Applicant, the data produced by the Applicant shows that in no individual year between 2012 and 2020 did the annual capacity factor exceed 70 percent or result in a calculated capacity equivalent of less than 6 MW.¹ Therefore, the Commission finds that the second criterion is not satisfied.

{¶ 10} Third, the Commission considers whether the facility meets the placed-in-service requirement in R.C. 4928.64(A)(1). Under this provision, the Facility must meet one of the following criteria: (a) has a placed-in-service date on or after January 1, 1998; (b) is a run-of-the-river hydroelectric facility that has an in service date on or after January 1, 1980; (c) is a small hydroelectric facility; (d) is created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998; or (e) is a mercantile customer-sited renewable energy resource. As the Applicant sought certification under the small hydroelectric facility provision of the statute, Staff contends there is no placed-in-service date requirement for qualifying facilities. Upon review, the Commission agrees that R.C. 4928.64(A)(1) does not prescribe a placed-in service date requirement for facilities qualifying as small hydroelectric facilities. See *In re the Application for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility for the Auglaize Hydroelectric Plant*, Case No. 17-2266-EL-REN, Finding and Order (June 6, 2018) at ¶ 13. Consequently, the Commission finds that the application is not required to meet the third criterion.

¹ Pursuant to Staff's calculations, the average annual capacity factor for the period of 2012 to 2020 was calculated at 53.33 percent, while the average annual capacity factor for the period of 2016 to 2020 was calculated at 58.80 percent, resulting in the calculated capacity equivalent of 6.32 MW and 6.35 MW, respectively.

{¶ 11} In addition to satisfying the above-cited criteria, R.C. 4928.645(B)(2) provides that renewable energy resource generating facilities should be registered with an approved attribute tracking system for the facility's renewable energy credits to be used for compliance with Ohio's alternative energy portfolio standards. The application indicates that the Facility is currently registered with the Michigan Renewable Energy Certification System (MIRECS), but if certified in Ohio, would be delisted from MIRECS and registered with the Generation Attribute Tracking System.

{¶ 12} Additionally, Ohio Adm.Code 4901:1-40-04(C)(2)(e) requires that facilities above 6 kilowatts measure their renewable output with a utility-grade meter. In its report, Staff explains that the meter described in the application satisfies this requirement.

{¶ 13} The Commission finds that Staff has correctly determined that the Facility does not meet the renewable energy resource requirements set forth in the second criterion. Accordingly, the Facility identified in the application will be denied certification as an eligible Ohio renewable energy resource generating facility.

III. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the application for certification of the Facility as an eligible Ohio renewable energy resource generating facility be denied. It is, further,

{¶ 16} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Dennis P. Deters

JMD/mef

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Case No(s). 21-1051-EL-REN

Summary: Finding & Order denying the application to certify the Sturgeon Falls Hydroelectric Facility as an eligible Ohio renewable energy resource generating facility. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio