



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

IN THE MATTER OF:

BEFORE THE RENEWABLES COMMITTEE
KURT GROSSMAN APPEAL

Docket No. 11-KGA-1

DOCKET

11-KGA-1

DATE Apr 25 2011

RECD. Apr 25 2011

COMMITTEE DECISION

Background

On August 26, 2010, Kurt Grossman, on behalf of SPGCA, LLC of Newport Beach, California, submitted an Application for Pre-Certification to the Energy Commission's California Renewables Portfolio Standard Program. The Application sought pre-certification for Genergy, described in the Application as a 20 megawatt (MW) small hydroelectric generating system built under water.

On October 18, 2010, Energy Commission staff sent a letter to Mr. Grossman denying the Application. The bases for the denial, as set forth in the letter, were that Genergy did not meet the definition of small hydroelectric as defined in the Overall Program Guidebook and that Genergy did not implement any other renewable resource or fuel described in Public Resources Code section 25741(a)(1).

On November 18, 2010, Mr. Grossman petitioned the Renewables Committee (Commissioners Peterman and Vice Chair Boyd) for reconsideration of the denial of the Application. On January 25, 2011, Mr. Grossman was notified that the Renewables Committee would provide Mr. Grossman the opportunity to make a presentation in support of the Application and would reconsider the denial of the Application in light of that presentation. The Committee conducted that hearing on March 29, 2011 at Energy Commission headquarters in Sacramento.

Decision

In acting upon a petition for reconsideration, the Committee's task is to determine whether or not to change the determination that is the subject of the petition. In this case, that determination was to deny pre-certification for the following reason:

"Since the SPGCA-1 facility will not implement a hydroelectric resource, or any other eligible renewable resource, the Energy Commission staff concludes that the facility is ineligible for the RPS."

The subject of the Application for Pre-certification is a device referred to by the Applicant as a submerged power generator (letter from Kurt Grossman, dated August 23, 2010). The device is an enclosed air space submerged in a body of water, such as a lake or ocean, which uses the force of a falling container full of water to push a lever which in turn drives a generator. Once the container has done this work, the water is expelled using a pump, and the container, now buoyant, rises to the surface to be refilled. The container is filled with water by gravity.

The Application was submitted under the “Overall Program Guidebook, second edition” and the “Renewables Portfolio Standard Eligibility” Commission Guidebook, third edition. Both are dated January, 2008. Although these documents were superseded by new editions in January, 2011, it was agreed at the hearing, and fairness requires, that the Committee base its decision on the older versions, which were in use at the time of both the submission of the Application, and the decision of denial.

The definition of “Hydroelectric” in the Overall Program Guidebook is:

“a technology that produces electricity by using falling water to turn a turbine generator, referred to as hydro. See also ‘small hydro’.”

“Small Hydroelectric” is defined in relevant part as follows:

“a facility employing one or more hydroelectric turbine generators, the sum capacity of which does not exceed 30 megawatts, except in the case of efficiency improvements ...

...a new small hydroelectric facility is not an eligible renewable energy resource for purposes of the RPS if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.”

We view the central question, then, as whether or not the device uses falling water to generate electricity. We find that it does. While it is true that the container used by the device could be filled with anything heavy and thereby fall due to gravity and push the lever, the fact is that the container is filled with water. Furthermore, the water gets into the container by force of gravity, i.e., it falls into the container. Given the broad nature of the definition applicable in this case, we are compelled to conclude that since water falls into the container, which, in turn, falls and pushes the lever, the device uses falling water to turn a generator. The device, therefore, meets the applicable¹ definition of “hydroelectric.”

¹ The definition of hydroelectric applicable as of the date of this Decision excludes marine uses. The definition could change again. For purposes of this matter only, the Committee orders that the definition of hydroelectric applicable at the time of the submission of the Application for Pre-certification be used in considering any future application for certification that may be submitted for the device that is the subject of this proceeding.

The Energy Commission staff's October 18, 2010 denial letter included reference to the "small hydroelectric" definition as well, but did not specify how that definition was relevant to the determination to deny the Application. However, Commission staff clarified for us at the hearing that it reached the conclusion that because the statute stated that small hydroelectric was ineligible if it had an adverse impact on a stream, if the device in question was to be placed not in a stream, but offshore, it was not hydroelectric. The Committee disagrees with this interpretation. The definition of hydroelectric does not include a requirement that the device be in a stream. It only requires the use of falling water. In this case, the device is not to be placed in a stream and therefore cannot have an adverse impact on a stream.

Other deficiencies in the application were identified by Commission staff at the hearing, but had not been cited as grounds for denial of pre-certification in the October 18, 2010 letter. Those deficiencies were enumerated by Staff as items 5, 7, 9, 10, 16 and 17. We have reviewed those portions of the Application and find that items 5, 7 and 9 seek information which is not yet available to the Applicant due to the stage of development of the device. Applicant should thus state, in writing, why the information is not yet available, and when it will be available. Items 10, 16 and 17 apparently were not understood by the Applicant but, with the assistance of Staff, Applicant should be able to complete those sections.

Applicant is not required to provide instream or hydrological data pertaining to the placement of the project in a stream, as the Application makes it clear that the device will be placed offshore.

Accordingly, we grant pre-certification to the Applicant, based upon the existing Application, subject to the following requirements:

1. All incomplete portions of the existing Application shall be completed and submitted to Commission staff for review.
2. The required explanations for why certain specific information is not yet available, and the timing for obtaining that information, shall be provided in connection with the existing Application.
3. Should Commission staff find any deficiencies in these submissions, then the deficiencies shall be communicated promptly to the Applicant and confirmed in writing.

Dated April 25, 2011 at Sacramento, California.

Original Signed By:
CARLA PETERMAN
Commissioner and Presiding Member

Original Signed By:
JAMES D. BOYD
Vice Chair and Associate Member



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**Docket No. 11-KGA-1
PROOF OF SERVICE
(Est. 3/11/2011)**

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DECLARATION OF SERVICE

I, Maggie Read, declare that on April 25, 2011, I served and filed copies of the attached COMMITTEE DECISION, dated April 25, 2011. The original document has been filed with the Docket Unit. A copy may be obtained from the Docket Unit by referring to Docket Number **11-KGA-1**.

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

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- ☒ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

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- ☐ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 11-KGA-1
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signed By:
Maggie Read
Hearing Adviser's Office