BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter Of The Application Of	)	
FirstEnergy Generation Corp. For	)	Case No. 09-1940-EL-REN
Certification Of R.E. Burger Units 4	)	
And 5 As An Eligible Ohio Renewable	)	
Energy Resource Facility.	)	

REPLY COMMENTS
BY
THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES

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BEFORE
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I. INTRODUCTION

On December 11, 2009, FirstEnergy Solutions ("FES") filed an application for certification of R.E. Burger Units 4 and 5 ("Burger") as an eligible Ohio renewable energy resource facility. On August 12, 2010, the Public Utilities Commission of Ohio ("PUCO" or "Commission") approved the certification of the Burger application. In the Order, the PUCO requested comments from "interested persons to submit proposals for, or comments regarding, a methodology to determine the existing market value of [renewable energy credits ("RECs")]."[1]

On October 12, 2010, the Ohio Consumer and Environmental Advocates[2] ("OCEA"), PUCO staff, and the American Wind Energy Association ("AWEA") submitted comments covering various issues relevant to the determination of the existing market value of RECs. Joint comments submitted by OCEA reflect the shared concern

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[1] *In the Matter of the Application of R.E. Burger Units 4 &5 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility,* Case No. 09-1940-EL-REN, Finding and Order at 10 (August 11, 2010).

[2] The OCEA members that jointly submitted comments on October 10, 2010 were The Ohio Consumers' Counsel, the Ohio Environmental Council, Citizen Power, the Sierra Club, and the Natural Resources Defense Council.

by the signatory members that the statutory formula as applied to Burger RECs could have a significant and negative impact on the development of other renewable energy sources in Ohio.[3] These impacts would thus deny Ohio consumers the potential benefits of those other renewable energy sources, as presented in Senate Bill 221 ("SB 221").

The August 12, 2010 Order also designated an additional period for reply comments.[4] In accordance with the reply schedule, the undersigned members of OCEA submit these Reply Comments for consideration by the PUCO.

II. OCEA AGREES WITH PUCO STAFF AND AWEA THAT COMPARABLE REC PRICES USED BY THE PUCO TO DETERMINE MARKET VALUE SHOULD BE IN-STATE AND NON-SOLAR, ALTHOUGH THE PRICE OF COMPARISON SHOULD BE AN AVERAGE MARKET PRICE RATHER THAN A SPOT MARKET PRICE.

PUCO staff and AWEA both consider non-solar, in-state RECs to be the best measure of REC value.[5] OCEA agrees that these are the only type of RECs that should be used for the calculation. As PUCO staff noted, this is the "most comparable to the generation type associated with the Burger facility."[6] The Staff notes further that a "market index"[7] should be used. OCEA recommends that any market index or other source of market information employed should not include Burger weighted RECs in the value determination of non-solar, in-state RECs. Further, a market index should be consulted only after a mature and efficient Ohio market develops.

Both AWEA and OCEA agree that including Burger RECs as a part of any Ohio market value determination is detrimental to the long-term development of an Ohio REC

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[3] OCEA Comments at 14 (October 12, 2010).
[4] Finding and Order at 10 (August 11, 2010).
[5] PUCO Staff comments at 2, AWEA comments at 4.
[6] PUCO Staff comments at 2.
[7] PUCO Staff comments at 4.

market. AWEA states that “the flood of heavily-weighted Burger RECs into the Ohio marketplace further depresses REC prices….”[8] In its initial comments, OCEA graphically demonstrated the likely negative impact on market prices should Burger RECs be included in a market value calculation.[9] AWEA noted that the flood of Burger RECs would increase “volatility and uncertainty”[10] in a market and result in renewable projects being unable to obtain financing.[11] As noted in PUCO staff comments, Burger weighted RECs will not be recognized by PJM’s Generation Attribution Tracking System (“GATS”). The fact that GATS, a regional entity designed to issue, track, and retire RECs in the region, will not recognize the Burger RECs is another strong argument to exclude these from any kind of market value determination. Staff notes that it is concerned with the “practicality of determining a REC market value absent consideration of any Burger multiplier RECs.”[12] But these RECs will be unique to Ohio. Including a flood of these RECs in any Ohio market index may distort the accuracy of any Ohio REC market value. These should not be included in any market value determination.

Finally, OCEA strongly agrees with AWEA that a continuous depression of the Ohio renewable energy marketplace caused by the inclusion of Burger weighted RECs would be contrary to the objective of SB 221 of “encouraging new renewable energy investments in Ohio.”[13] OCEA urges the Commission to exclude from consideration any index or information source that would attempt to include any weighted RECs created by the Burger plant.

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[8] AWEA comments at 5.
[9] See OCEA comments, pp. 12-14, Figure 1 (p. 13) and Example 1.
[10] AWEA comments at 5.
[11] AWEA comments at 6.
[12] PUCO Staff Reply Comments at 6 (November 5, 2010).
[13] Id.

It should be noted that market information, such as a market index, could only be used to determine REC values after a market develops in Ohio. As stated in initial comments, both OCEA and AWEA note that the Ohio REC market is not developed enough for the PUCO to establish a non-solar, in-state REC value.[14] Thus, any of our recommendations may only be employed once a market, as characterized in the OCEA and AWEA comments, is established. Until the Ohio market is mature and efficient, 75% of the Alternative Compliance Payment ("ACP"), as discussed below, should be used as a substitute for the market value for the next two years, when all other requirements discussed in these comments and in OCEA's initial comments are met.

A. Until A REC Market Develops, A Percentage Of The Average Compliance Payment Method Should Be Used To Determine The Market Price

As stated in OCEA's initial comments, there is not a mature market for renewable energy credits in Ohio.[15] Thus, the Commission should adopt a percentage of the annual Alternative Compliance Payment ("ACP") prescribed in SB 221 as the best proxy for the current market price. Various examples of the PUCO employing this value were presented in OCEA's initial comments.[16]

In their November 5, 2010, Reply Comments, PUCO staff notes that a percentage of ACP has been employed in other cases, but states that "reliance on the ACP should generally represent a back-up methodology in the event that other REC market data is not available."[17] Staff then acknowledges that while using this method would have some

[14] OCEA comments at 7, AWEA comments at 7.
[15] OCEA comments at 7-9.
[16] OCEA comments at 10-11.
[17] PUCO Staff Reply Comments at 5 (November 5, 2010).

advantages, using this method is not "necessarily reflective of the REC market status."[18] Certainly, OCEA agrees that if there is an Ohio REC market that meets the requirements presented in OCEA's initial comments, this would be a more accurate reflection of the market. Although staff states that "market indices are currently available,"[19] there is no suitable market currently existing in Ohio.

A market index should not be used unless the values represent "existing market value" under R.C. 4928.65. In order for a market index to provide the existing market value, it must be liquid and the product being sold must be homogeneous. Illiquid markets do not provide an existing market value because there are not enough buyers and sellers to move the price to the correct equilibrium for the product. At this time, OCEA is not aware of a functioning market index for RECs, let alone a liquid one. OCEA believes that using 75% of the ACP provides for two years provides certainty regarding the market value of a REC until a liquid market develops.

Therefore, until the kind of market exists that will supply *reliable* indices, the members of OCEA recommend the Commission adopt 75% of the ACP value, as presented in Ohio law,[20] to substitute for a market price until the Ohio market is mature and efficient. This is a second-best solution until market conditions mature, and the recommendation is for two years. At the conclusion of two years, the Ohio market would be re-evaluated using the criteria presented in OCEA's initial comments. The PUCO should adopt this recommendation.

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[18] Id.
[19] Id.
[20] R.C. 4928.64(C)(2)

B. In The Alternative, If The Commission Adopts A Market Approach Right Away, The Average Market Price, Rather Than A "Spot" Market Price, Should Be Used To Determine REC Value, And An Annual Determination Should Be Used

OCEA agrees with the comments of AWEA and the PUCO Staff that a single spot market price should not be used to determine the value of a REC for the purposes of the Burger calculation. As pointed out by AWEA in their comments, the spot market prices for RECs can fluctuate significantly.[21] Since the spot market price of a REC is based upon market information known at that time, wide fluctuations in spot market prices can be an indication that a specific day's spot market price is based upon imprecise market information rather than reflecting an accurate representation of the true value of a REC. By taking several spot market prices over time and using an average of those prices to determine the market value of a REC, the effect of imprecise market information on individual spot market prices can be smoothed out. For this reason, OCEA agrees with the recommendation of the PUCO Staff that an average of spot prices over an entire year should be used.[22] In addition, we agree with the PUCO Staff that the market index used should provide prices at least quarterly, although monthly information would be preferable.[23]

OCEA also agrees with the PUCO Staff that the determination of the market value of a REC should be determined yearly, with the REC market value from the previous year being used in the monthly multiplier calculations for the current year.[24] We also agree with the reasoning of the PUCO Staff that this methodology would be

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[21] For example, over a 5 year period, Connecticut REC prices varied between $2.25 and $51.50. Unlike staff however, AWEA prefers a longer term REC price. AWEA comments at 5.
[22] PUCO Staff comments at 5.
[23] Id.
[24] PUCO Staff comments at 6.

administratively efficient and also allow FirstEnergy Generation Company a greater amount of certainty concerning the amount of the multiplier.[25]

C. If The Market Value Of A REC Significantly Deviates From The Long-Term Avoided Cost Of Marginal Renewable Energy Resources, The Market Price Should Be Determined By Using The Percentage Of Alternative Compliance Payment, As Recommended By OCEA

The keystone of the multiplier calculation contemplated by Section 4928.65 of the Ohio Revised Code is the determination of the market value of a REC. As demonstrated above, a true market value cannot be determined until established markets develop.[26] Once these markets develop, an average of spot market prices methodology is appropriate. However, because of the influence of Burger bonus RECs, these spot markets may not function properly and undermine the development of renewable energy in Ohio. In their comments, AWEA noted that the market value of RECs should approximately reflect the "incremental cost of building a new generation facility, plus a rate of return, minus wholesale energy revenues and federal tax benefits."[27] In other words, the value of a REC should be related to the cost of producing a REC to some degree. This relationship is not exact because it is possible to end up with an oversupply or an undersupply of RECs.[28] However, in general, the value of a REC should be related to the cost of producing a REC, subject to existing real demand conditions (that is, demand conditions not reflective of the "weighted REC.")

[25] Id.
[26] OCEA has attempted to get access to an Ohio non-solar REC index from brokers trading in this arena and has had no success.
[27] AWEA comments at 6.
[28] In other words, an excess of RECs would be produced based on renewable generation constructed based upon inaccurate revenue estimates. Or, an undersupply of RECs may occur during the time it takes to construct facilities to meet demand.

If the value of a REC in the market bears little or no relationship to the cost of generating a REC, this would be an indication that the Burger bonus RECs, which can be generated for a fraction of the cost of a normal REC, are impacting the REC market. In such a situation, the price of a REC as determined by a market index should be viewed as not reflecting the value of a REC. As a safety valve for the vicissitudes and potential destabilizing effects of the Burger bonus RECs, OCEA recommends that during the yearly regulatory process surrounding the determination of the market value each year, as suggested by the PUCO Staff, a neutral, third-party consultant is used to compare the avoided cost of marginal renewable energy resources to the market value of RECs.[29] If the difference in these values can only be explained by a failure of the REC market because of the influence of Burger bonus RECs, the market price of a REC should then be determined by a percentage of the average compliance payment as outlined in Section II. A. above.

III. THE BURGER REC MULTIPLIER ALGORITHM IN THE STAFF COMMENTS SHOULD NOT INCLUDE THE PERCENTAGE OF BIOMASS FACTOR (UNLESS IT IS MULTIPLIED BY THE TOTAL MWH GENERATED).

The Staff example and algorithm provided in their comments ("=0.90 * 45/30") would inappropriately discount the biomass derived MWHs twice, since the 1005 MWHs in the example have already been adjusted to reflect the biomass content of the fuel.[30] The algorithm is appropriate only if all generated MWHs are multiplied by the multiplier (triggered by an 80 percent or greater biomass fuel mix). Therefore, this should not be employed by the PUCO unless the appropriate conditions exist.

[29] PUCO Staff comments at 5.
[30] Staff Comments at 7.

IV. CONCLUSION

The undersigned members of OCEA agree with many of the comments filed by PUCO Staff and AWEA, including the use of a non-solar Ohio REC as a standard and an annual determination of the market price. But the Commission must acknowledge that a mature and efficient REC market does not currently exist in Ohio. Until market conditions satisfy the criteria presented above, the PUCO should adopt the 75% of the ACP value in place of a market value for two years. After that time, the proposed criteria may again be revisited and the condition of the Ohio REC market determined. This 75% of ACP should also be a default value if the calculated REC price deviates substantially from the average market value. OCEA respectfully requests that the PUCO adopt these recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Reply Comments by the Ohio Consumer and Environmental Advocates* has been served upon the following parties by first class or electronic mail this 9th day of November, 2010.

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