

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for	)	
Alternative and Renewable Energy	)	Case No. 08-888-EL-ORD
Technologies and Resources, and Emission	)	
Control Reporting Requirements, and	)	
Amendment of Chapters 4901:5-1, 4901:5-3,	)	
4901:5-5, 4901:5-7 of the Ohio	)	
Administrative Code, pursuant to Chapter	)	
4928, Revised Code, to Implement Senate	)	
Bill No. 221.		

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**REPLY COMMENTS  
OF  
NEW GENERATION BIOFUELS**

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New Generation Biofuels respectfully submits these Reply Comments to the proposed rules implementing the Alternative Energy Portfolio Standard (“AEPS”) issued by the Public Utilities Commission of Ohio (“Commission”) for comment in its Entry dated August 20, 2008. New Generation Biofuels was fully supportive of the rule as proposed by the Commission and for that reason did not file comments in the initial round on September 9, 2008. In the initial round of comments, however, three parties urged changes to the definition of “Biomass Energy” authored by the Commission. New Generation Biofuels believes that the proposed changes would be a mistake, and thus we submit these Reply Comments to address those proposed changes.

**I. DESCRIPTION OF NEW GENERATION BIOFUELS**

Formed in 2006, New Generation Biofuels is fast developing a new technology for the manufacture of a biofuel from renewable vegetable oils and animal fats. New Generation Biofuels’ manufacturing process produces a biofuel with substantially lower life-cycle CO<sub>2</sub> emissions than standard biofuels.

As the Commission may be aware, the production and combustion of standard biodiesel produces substantially fewer greenhouse gas emissions and local air pollutants than corn-based ethanol. New Generation Biofuels has created a biofuel even more energy-efficient than biodiesel. Standard biodiesel is produced using a more energy-intensive chemical reaction process called transesterification than does New Generation Biofuels' bioemulsion process. New Generation Biofuels' process is not a chemical reaction but a more straightforward and lower energy mixing process. Moreover, New Generation Biofuels avoids other energy losses because there are no waste byproducts as found in the biodiesel process.

## **II. THE COMMISSION'S DEFINITION OF "BIOMASS ENERGY" IS APPROPRIATE AS PROPOSED**

New Generation Biofuels supports the definition of "Biomass Energy" proposed by the Commission. New Generation Biofuels addresses these Reply Comments to the comments of the few parties seeking to change that definition.

**A.** The Ohio Consumer and Environmental Advocates propose replacing the definition of "Biomass Energy" authored by the Commission staff with language from the 2007 Energy Independence and Security Act ("EISA").<sup>1</sup> The language from the EISA – designed for the federal Renewable Fuel Standard for automotive fuels – would limit eligibility to feedstocks grown on "agricultural land cleared or cultivated" prior to the effective date of the rule. Although well-intentioned, the proposed language would not achieve its stated objective of limiting the quantity of land used for agriculture and would create a disproportionate burden for small, experimental biofuel producers such as New Generation Biofuels.

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<sup>1</sup> The American Wind Energy Association et al. make a similar proposal, although they do not recommend the exact language from the Energy Independence and Security Act.

Because agricultural crops and agricultural land are fungible commodities used primarily for purposes other than biofuel production, farmers may easily evade the purpose of the language the Ohio Consumer and Environmental Advocates propose simply by assigning the production of previously cleared land to the biofuels market and using newly cleared land for other crops. The proposed language would create bureaucratic red tape by requiring that biofuel producers trace their feedstocks to specific parcels of land, but it would do nothing to advance its stated purpose of limiting the overall quantity of land used for agriculture.

Moreover, the red tape created by this restrictive language would disproportionately burden small and experimental biofuel producers. It is likely that large producers of corn ethanol serving the automotive fuel market will ultimately be able to manage compliance with the requirement to trace their feedstocks to individual parcels of land.<sup>2</sup> These producers have the operational scale necessary to enter into long-term, high-volume contracts with individual farmers. By contrast, small producers of experimental biofuels – who typically produce fuels that are less energy intensive and more environmentally responsible than corn ethanol – will find this requirement insurmountable. New Generation Biofuels is small company producing a biofuel that results in fewer life-cycle greenhouse gas emissions than traditional biodiesel (which is itself an improvement over corn ethanol). Because of its small size and its desire to demonstrate the effectiveness of its production process using a diversity of feedstocks, including reprocessed vegetable oils and experimental non-food based plant oils; New Generation Biofuels lacks the scale to enter into purchase agreements with individual farmers. Rather, it buys its feedstocks on the market, where commodities are intermingled and the precise origin of each is

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<sup>2</sup> It should be noted that the U.S. Environmental Protection Agency has yet to issue regulations implementing this requirement. Those regulations are expected in mid-2009. *See EPA Delays RFS2 Ruling*, Biomass Magazine (Sept. 2008), available at [http://www.biomassmagazine.com/article.jsp?article\\_id=1932](http://www.biomassmagazine.com/article.jsp?article_id=1932).

unknown or unknowable. Consequently, unlike the large producers of less energy-efficient biofuels, New Generation Biofuels would have great difficulty complying with the proposed language from the EISA.

**B.** Alone among the commenters, Vertus Technologies Industrial, LLC (“Vertus”), a coal processor, recommends the extreme measure of excluding from the definition of “Biomass Energy” all agricultural crops and trees. To begin with, it should be stressed that “Biomass Energy” is a statutory term used in the definition of “Renewable energy resource.” Ohio Rev. Code § 4298.01(A)(35). Vertus provides no explanation for how its proposed definition of “Biomass Energy” – which excludes two of the most well-known sources of biomass energy – could possibly be consistent with the intent of the Ohio Legislature when it used that phrase.

Vertus also fails to explain why its concern over corn prices warrants the extreme measure of excluding all agricultural crops and trees from the definition of “Biomass Energy,” a measure that would greatly reduce the contribution of biomass energy to Ohio’s AEPS. Biomass energy produced from agricultural crops and trees can yield substantial benefits to the state of Ohio and the country as a whole. Compared to fossil fuel alternatives, biomass sources can (1) reduce emissions of greenhouse gases and local air pollutants, (2) reduce the need for mining, drilling, and other negative impacts to the natural landscape; and (3) lessen the exposure of Ohio ratepayers and consumers to fluctuations in the price of coal, oil, and natural gas. Moreover, unlike other major sources of renewable energy, biomass energy can be stored and dispatched at times of peak demand, helping to contain rate pressure. As the percentage of electricity that must be generated from renewable resources increases, the capability of biomass energy to play a load following role will grow in importance. These benefits far outweigh the

speculative and unsubstantiated suggestion that the present definition of “Biomass Energy” in the Ohio AEPS will have a negative impact on global food prices.

### **III. CONCLUSION**

The biofuels sector is experiencing a period of rapid technological development. High prices for petroleum and certain feedstocks are driving biofuels manufacturers to develop more energy efficient production processes and to experiment with a wider array of feedstocks. At this stage in the development of the biofuels sector, it would be a serious mistake for the Commission to impose narrow and inflexible eligibility rules that could limit progress. The definition of “Biomass Energy” authored by the Commission staff should be retained.

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/26/2008 3:43:26 PM**

**in**

**Case No(s). 08-0888-EL-ORD**

Summary: Reply electronically filed by Ms. Connie L Lausten on behalf of New Generation Biofuels