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**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY COMMENTS  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

2010 NOV -5 PM 1:25

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**In the Matter of The Application of R.E. )  
Burger Units 4 and 5 For Certification As ) Case No. 09-1940-EL-REN  
An Eligible Ohio Renewable Energy )  
Resource Facility )**

<sup>1</sup> PUCO Staff Initial Comments, p. 7

Therefore, under this example, the 1,005 RECs would have a compliance equivalence of 1,508 RECs.

Staff proposes that the quotient obtained by dividing the ACP by the market value be computed in January of each year. This figure would then be fixed for the calendar year and applied to the number of RECs created each month by GATS during the calendar year to determine the monthly compliance equivalence, provided the minimum biomass threshold is satisfied each month. If the minimum biomass contribution is not achieved in a month, then the RECs created by GATS for that month would retain their original compliance equivalence (one REC = one MWH).

To facilitate this calculation, the Staff would strive to perform the annual ACP determination by the end of January of each calendar year. By rule<sup>2</sup>, Staff has until June of each year to determine the ACP – however, Staff would attempt to complete this calculation as soon as possible upon the availability of the requisite consumer price index inputs so that the quotient referenced above can be determined.

## **2. American Wind Energy Association (AWEA)**

### **A. Type of REC<sup>3</sup>**

In its comments, AWEA concluded that the type of REC most representative of a REC for Burger is an in-state non-solar REC. Therefore, when assessing the current market value of a REC, AWEA argues that it is the market value of an in-state non-solar REC that should be inserted into the multiplier calculation.

Staff concurs with this conclusion, as indicated by Staff's Initial Comments on the topic.<sup>4</sup>

### **B. Market Value Should Not Rely on Volatile and Fluctuating Short-Term Market<sup>5</sup>**

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<sup>2</sup> OAC, 4901:1-40-08(A)(2)(b)

<sup>3</sup> AWEA Initial Comments, p. 4

<sup>4</sup> PUCO Staff Initial Comments, p. 2

<sup>5</sup> AWEA Initial Comments, p. 5

AWEA contends that a reliance on the spot or short-term REC market when determining the REC market value is inappropriate, as a reliance on the short-term market introduces too much volatility and uncertainty. AWEA further argues that such volatility and uncertainty impedes the ability to secure long-term financing for renewable projects.

Staff disagrees, instead proposing that a reliance on REC spot market index represents the most appropriate means of determining the “then existing market value” as required by 4928.65, ORC.<sup>6</sup> Staff adds, however, that its proposed methodology of calculating the market value at the beginning of the year and applying that value throughout the year provides certainty and avoids some of the volatility that may be present in the REC market.

C. Three Mechanisms for Determining Market Value<sup>7</sup>

- 1) Use results from the most recent long-term solicitation for in-state non-solar RECs

AWEA proposes to use the results from the most recent long-term competitive solicitation for in-state non-solar RECs as the basis for determining the REC market value.

Staff finds this approach to be problematic for several reasons. First, such solicitation would have to be conducted regularly – perhaps annually – to produce current information, and with that comes administrative cost and burden. Second, to be effective, this approach would rely on robust responses to the solicitation, which may or may not occur. Recent experience involving renewable RFPs in the state would only serve to reinforce the potential limitations to this approach. Finally, Staff does not believe that results from a long-term solicitation are consistent with the statutory requirement to determine “the then market value of one renewable energy credit.”

- 2) Use an independent third-party consultant to calculate the long-term avoided cost of marginal renewable energy resources

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<sup>6</sup> PUCO Staff Initial Comments, p. 2

<sup>7</sup> AWEA Initial Comments, p. 7

As another alternative, AWEA proposed the use of a neutral, third-party consultant to calculate the long-term avoided cost of marginal renewable energy resources. Through the establishment of a long-term supply curve for renewables in Ohio, AWEA argues that a long-term forecast of REC prices could be established, thereby encouraging investment in new renewable resources.

Staff finds this approach to be unnecessarily complex and potentially costly, with a high probability of its result being contested.

- 3) Market value of a REC would be set equal to the alternative compliance payment (ACP), in the event that options 1 and 2 above cannot be used

Staff appreciates the administrative ease of such an approach, but concludes that it is wholly inconsistent with the meaning of the relevant language from 4928.65, ORC. It is unreasonable to assume that the legislature intended to create a multiplier calculation in which the multiplier would automatically be nullified by virtue of the inputs to the formula. While the market value could conceivably be the same as the ACP, Staff does not believe that this should occur by definition alone.

### **3. Office of the Ohio Consumer's Counsel and Environmental Advocates (OCEA)**

- A. 4928.65, ORC, is unconstitutional and Commission should rule as such<sup>8</sup>

The OCEA appears to be directing the Commission to disregard the portions of 4928.65, ORC, that OCEA deems objectionable. The Staff does not believe that this is the appropriate form to address this particular argument.

- B. Currently no liquid or transparent REC market exists in Ohio that could indicate a REC market value<sup>9</sup>

OCEA argues that the Ohio REC market is in its infancy, and therefore the availability of transparent information on REC pricing is unavailable.

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<sup>8</sup> OCEA Initial Comments, p. 3

<sup>9</sup> OCEA Initial Comments, p. 7

Staff agrees that the REC market in Ohio is still developing, and greater transparency is expected in the future. However, market indices are currently available, and Staff continues to believe that the use of a non-solar Ohio REC market index (or indices) represents the best option for determining the REC market value for purposes of performing the Burger multiplier calculation. Such an approach would be unbiased, administratively convenient, and verifiable. Brokers involved in the Ohio REC market that could potentially be utilized include at least, but not limited to, Clear Energy Brokerage and Consulting; Evolution Markets; and Spectron.

- C. In the absence of a functioning REC market, the Commission should set the REC market value at 75% of the ACP<sup>10</sup>

OCEA argues that, in the absence of a mature REC market in Ohio, the Commission should set the REC market value at 75% of the applicable ACP. OCEA indicates that this approach has been accepted by the Commission in other proceedings before it involving RECs.

While Staff acknowledges that a reference to a percentage of the ACP is a component in other REC proceedings, it has been Staff's position that a reliance on the ACP should generally represent a back-up methodology in the event that other REC market data is not available.

While utilizing the percent of ACP approach in this context as proposed by OCEA would be easy to administer, Staff does not believe this represents the best available option. The non-solar ACP is strictly a function of the minimum value of \$45 and the applicable annual consumer price index adjustment, as required by statute, and therefore not necessarily reflective of the REC market status.

- D. Use of RFP results or auction process to determine REC market value<sup>11</sup>

OCEA identified an auction or RFP process as one means of potentially ascertaining a market price, and if so, OCEA proposed certain parameters for such an approach. However, OCEA ultimately concludes that "... an auction or RFP process is risky given the uncertain state of bidder

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<sup>10</sup> OCEA Initial Comments, p. 10

<sup>11</sup> OCEA Initial Comments, p. 9

perceptions, where the mere potential for the Burger weighted REC has depressed REC prices and because of the potential for gaming.”

As mentioned previously in its Reply Comments, Staff believes that there are significant limitations to the use of an RFP process in this context.

E. Market value determination should exclude the Burger weighted RECs<sup>12</sup>

OCEA argues that Burger weighted RECs should not be allowed to influence the REC market value determination, as such influence would only serve to lower the REC market value and exacerbate the “death spiral” discussed in OCEA’s initial comments.

Staff agrees with the objective in principle, as it potentially limits the “spiral” concern discussed in more detail below. However, Staff is concerned with the practicality of determining a REC market value absent consideration of any Burger multiplier RECs.

F. Prohibit Burger weighted RECs from being traded<sup>13</sup>

One way to prevent the multiplier effect from impacting the REC market value, OCEA argues, is to prohibit the trading of any Burger weighted RECs. Specifically, OCEA proposes that, “Owners of weighted RECs would be allowed to use those RECs towards their compliance benchmarks, but would not be able to trade those RECs in the market.”

Staff does not believe this approach would be consistent with the objective of the multiplier language included in 4928.65, ORC. If, as Staff believes is the case, the intent of the multiplier language was to provide added value for the renewable electricity generated at an applicable facility under certain circumstances, then Staff concludes that any limitation as to the use of those RECs impairs their value – contrary to the presumed objective of the statutory language.

G. Concerns with potential REC “death spiral”<sup>14</sup>

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<sup>12</sup> OCEA Initial Comments, p. 12

<sup>13</sup> OCEA Initial Comments, p. 15

<sup>14</sup> OCEA Initial Comments, p. 12

OCEA raises a concern regarding the potential for the design of the multiplier calculation to result in a self-feeding escalation of the multiplier effect, an escalation fed by downward pricing pressure due to an increased REC supply associated with the multiplier. As more RECs enter the market, OCEA assumes that the REC market value will drop – and when this lower REC market value is inserted in the multiplier calculation, it increases the multiplier effect, thereby increasing the REC supply, thereby asserting more downward pressure on the REC market value and so on.

Staff acknowledges the concern raised by OCEA as a potential function of REC supply and demand dynamics. Staff believes that this potential spiral is inherent in the formula dictated by 4928.65, ORC, and cannot be altered administratively by the Commission. While Staff sees value in the concept of determining the REC market value absent an influence by the supply of RECs associated with the Burger multiplier, Staff has concerns about the practicality of achieving this.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Reply Comments* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 5<sup>th</sup> day of November, 2010.

/s/ Thomas W. McNamee

**Thomas W. McNamee**  
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