

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of FirstEnergy)	
Solutions Corp. for Certification of R.E. Burger)	
Units 4 and 5 as an Eligible Ohio Renewable)	Case No. 09-1940-EL-REN
Energy Resource Generating Facilities.)	

**REPLY COMMENTS OF THE AMERICAN WIND ENERGY ASSOCIATION
ON CALCULATING THE MARKET VALUE OF RENEWABLE ENERGY CREDITS**

The American Wind Energy Association (“AWEA”) hereby files these Reply Comments to respond to the comments filed by the Public Utilities Commission of Ohio (“PUCO”) Staff (“Staff”) regarding the calculation of the market value of RECs.

A. Staff Unnecessarily Adopts a Narrow Interpretation of the Phrase “Then-Existing” in Ohio Revised Code (“R.C.”) 4928.65.

R.C. 4928.65 creates the Burger Multiplier, which allows “each megawatt hour of electricity generated principally” from biomass at the Burger Plant to equal the “product obtained by multiplying the actual percentage of biomass feedstock by heat input [in btu’s] used to generate such megawatt hour by the quotient obtained by dividing the then existing unit dollar amount used to determine a renewable energy compliance payment [for the non-solar benchmarks] by the then existing market value of one renewable energy credit.”¹ (Emphasis added). To justify its proposed calculation of the market value of a REC, the Staff takes an unnecessarily narrow view of the phrase “then-existing” in this statute—a phrase that is not defined by statute or PUCO regulation. In particular, the Staff claims that the phrase “implies. . .

¹ R.C. 4928.65

that the design is intended to utilize a spot REC market value in the multiplier calculation,”² and makes the conclusory statement that “reliance on the REC spot market index represents the most appropriate means of determining the ‘then existing market value’ as required by 4928.65.”³ This interpretation not only is unworkable, but misreads the statute.

There is nothing in R.C. 4928.65 or the PUCO’s rules that defines the phrase “then existing market value” to mean the REC spot market. Staff apparently relies on the word “then” for its conclusion that the calculation of the market value of a REC requires the use of the spot market. In reality, the use of the term “then” simply indicates that the Burger calculation will be done multiple times. What the calculation is based upon is irrelevant. Staff concedes this fact, noting that “an annual determination of market value is most appropriate/”⁴ Every time the Staff completes the Burger calculation, a new “then existing market value” of a REC will be established. As a result, the use of the word “then” has no bearing on whether short term or long term pricing is used in the calculation.

Furthermore, the use of the REC spot market would introduce tremendous volatility and uncertainty into the calculation, run directly contrary to the long-term planning and large capital investments needed by renewable energy facilities, and trigger a series of unfortunate consequences that includes both the inability to obtain long-term financing and the self-perpetuating “death spiral” previously discussed at length by AWEA. As a result, the use of long-term pricing represents the best option for calculating the market value of a REC. Determining the market price of a REC over the long-term is the only way to accurately link the

²Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (“Staff Comments”), p. 3.

³ Reply Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (“Staff Reply Comments”), p. 3.

⁴ Staff Comments, p. 4.

market value of a REC to the true incremental cost of building a new renewable generation source.

1. The use of long-term RFPs presents the best evidence of the market value of a REC.

In support of its argument, Staff claims that the use of long-term RFPs is “problematic,”⁵ thereby ignoring this Commission’s recent approval of a long-term RFP process as part of FirstEnergy’s most recent ESP case.⁶ The RFP method not only presents the Staff with an administratively simple solution to the REC calculation issue, but presents the best evidence of the market value of a REC.

2. The use of a third-party consultant to calculate long-term avoided cost is a legitimate backup to the use of long-term RFPs.

Staff also rejected AWEA’s second proposal involving the use of a neutral, third-party consultant to calculate the long-term avoided cost of marginal renewable energy resources (and which would only apply in the event the RFP process proved unavailable) as “unnecessarily complex and potentially costly.”⁷ The PUCO regularly selects consultants to assist with complicated matters, and this process would be no different. In fact, the selection of a neutral third-party would allow a subject-matter expert to study the issue and render a conclusion upon which the Commission can rely. The fact that such a report could be challenged is irrelevant.⁸

3. The use of the alternative compliance payment as the market value of a REC represents a logical backstop in the event other alternatives are not available.

⁵ Staff Reply Comments, p. 3.

⁶ See Second Supplemental Stipulation filed on July 22, 2010 in PUCO Case No. 10-388-EL-SSO and approved by PUCO Order on August 25, 2010.

⁷ Staff Reply Comments, p. 4.

⁸ Staff Reply Comments, p. 4.

Despite recognizing the administrative ease of AWEA's final proposal, the Staff also rejects the use of the alternative compliance payment as the market value of a REC.⁹ At this point, and after fully briefing this issue in its prior pleadings, AWEA emphasizes that this proposal would be a backstop—only applicable if the Commission could not obtain the RFP results from the utility or another party, or find a qualified third-party consultant.

B. Important Policy Considerations Support AWEA's Comments

The PUCO Staff also does not address the important policy arguments supporting AWEA's recommendations. From a practical standpoint, AWEA's proposal regarding the calculation of the average market price of RECs protects the higher value granted to Burger RECs in R.C. 4928.65, while simultaneously ensuring that there remains a viable market for other renewable energy resources as intended by SB 221. Staff's proposal does not. Without statutory justification, the Staff bases its calculation on the volatile and fluctuating short-term spot REC market, and introduces unnecessary uncertainty into a marketplace otherwise well-defined by SB 221.

The Staff's comments presume that there is a REC spot market index available for calculating the "then existing market value" of a REC. Rather than specifically mentioning such an index, the Staff generically concluded that "such an index should be widely recognized and publicly available," but that it "may be necessary to obtain a subscription for such an index in the event one is not publicly available."¹⁰ There currently is not an established long-term, forward-pricing market for RECs in Ohio. Furthermore, Staff only identifies certain brokers working in Ohio (Clear Energy Brokerage, Evolution Market, and Spectron).¹¹ REC spot markets generally

⁹ Staff Reply Comments, p. 4.

¹⁰ Staff Comments, pp. 4-5.

¹¹ Staff Comments, p. 5.

involve relatively small quantities of RECs and are reflective of limited, short-term transactions necessary to balance a load-serving entity's compliance requirement. REC spot markets are not reflective of the actual cost associated with the capital investment necessary to encourage the development of new renewable resources. As a result, REC spot markets are an improper mechanism for calculating the market-price of a REC.

C. AWEA Supports the OCEA Coalition's Comment that Weighted Burger RECs Should Not be Tradeable.

OCEA's Initial Comments appropriately note that "[o]wners of weighted RECs [i.e. Burger "Bonus" RECs] would be allowed to use those RECs toward their compliance benchmarks, but would not be able to trade those RECs in the market."¹² Regardless of how the Commission decides to calculate the market value of a REC, AWEA strongly supports OCEA's recommendation.

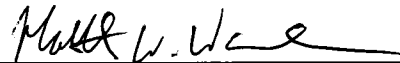
As the Staff mentioned on page 6 of its Initial Comments, "PJM's Generation Attribution Tracking System (GATS). . . will not reflect the multiplier system" and "will simply be recording the renewable generation at Burger Units 4 and 5 as RECs on a one-for-one basis." Because GATS, the approved tracking system to be used to account for Burger RECs in the marketplace, only recognizes one (1) REC for each MW of renewable generation at Burger, it would be difficult if not impossible for FirstEnergy Solutions to transact using the weighted Burger RECs. For this reason, it is entirely reasonable to allow weighted Burger RECs to be used solely for compliance purposes. And, doing so would prevent weighted Burger RECs from depressing the Ohio REC market and ensure a more accurate value of Ohio RECs is reflected in the Burger Multiplier calculation.¹³

¹² Comments by the Ohio Consumer and Environmental Advocates ("OCEA Comments"), p. 15.

¹³ OCEA Comments, p. 15.

WHEREFORE, AWEA's Reply Comments highlight the potentially devastating impact of the use of the spot market in the calculation of the market value of a REC. AWEA's proposal provides a practical solution more consistent with the Burger Statute than the Staff's proposal, and the best possible opportunity for the continued development of new renewable energy investments in Ohio. AWEA respectfully requests that the Commission reject the Staff's comments and adopt the avoided cost calculation of the market value of RECs.

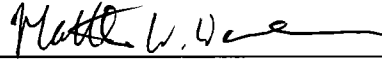
Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Comments was served upon the parties of record listed below this 9th day of November 2010 *via* electronic mail and regular U.S. mail.



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