



For Immediate Release
August 11, 2010

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PUCO approves controversial biomass project

Utility giant FirstEnergy handed undeserved windfall

(Columbus, OH)—The Public Utilities Commission of Ohio today approved renewable energy certification of FirstEnergy’s controversial proposal to convert a coal-burning power plant to biomass fuel. The action sets the stage for Ohio to be home to one of the largest biomass facilities in the world.

In a unanimous 5-0 vote, the Commission voted to certify the proposal as a “renewable energy” project, which will allow FirstEnergy to replace coal at two generating units at the company’s R.E. Burger facility with an unknown amount and type of biomass, which could include trees, crops, or other plant material.

The PUCO approval also sets up the utility giant to earn a disproportionate share of renewable energy credits (RECs) at Burger, a 312 MW electric power plant located on the Ohio River in Shadyside, Ohio.

Under a special law change sought by the Strickland Administration and included last year in the state budget bill, FirstEnergy can count RECs generated at the Burger facility for several times more value than a REC generated or traded anywhere else in Ohio.

Will Reisinger, staff attorney for the Ohio Environmental Council and lead counsel on the case, said that the decision could harm both Ohio’s environment and its fledgling renewable energy economy.

“With this decision, the Commission completely ignored Ohio law, which requires utilities to show that their biomass fuel will be ‘available on a renewable basis’¹ before receiving renewable certification. Despite repeated discovery requests for more information, FirstEnergy has stonewalled and refused to provide any information about the source of its biomass material,” said Reisinger.

¹ Ohio Adm. Code 4901:1-40-01(E): “‘biomass energy’ means energy produced from organic material derived from plants or animals and available on a renewable basis.”

The Commission applied the criteria outlined in Ohio Revised Code Section 4928.64, finding that a renewable energy facility must be “recognized as a renewable energy resource pursuant to sections 4928.64(A)(1) and 4928.01(A)(35).”² However, biomass is not defined within the Revised Code, but within Section 4901 of the Ohio Administrative Code.

Ohio Administrative Code Section 4901:1-40-01(E) defines “biomass energy” as “energy produced from organic material derived from plants or animals and available on a renewable basis.” The Commission failed to apply this definition to the Burger application.

“The PUCO made a legal error by not requiring FirstEnergy to demonstrate that its biomass fuel will be “available on a renewable basis” prior to certification,” said Reisinger.

During official discovery proceedings, the company provided no detail regarding the source of its biomass fuel, how the biomass will be transported, or whether the biomass fuel will be obtained using sustainable processes. FirstEnergy also failed to demonstrate that converting the Burger plant from coal to biomass will result in less mercury, particulate matter, or carbon dioxide pollution—or whether Ohio even has enough wood to support the massive project.

“While other states such as Massachusetts have reevaluated biomass policies in light of new data regarding the environmental impacts of biomass generation, Ohio failed today to follow that prudent route,” said Reisinger.

“Today, the PUCO failed to conduct an essential review of the proposed fuel prior to certification of the project.”

Decision May Slow Growth of Ohio’s Renewable Energy Industry

The decision also hands FirstEnergy—the state’s largest utility—a windfall profit on renewable energy credits.

In its application, FirstEnergy estimated that RECs generated at the Burger plant will be worth four and-a-half times as much as a REC produced or traded by any other generator in Ohio.

² PUCO Case No. 09-1940-EL-REN, Finding and Order at 2.

The “Burger Amendment,” which was slipped into the 2009 state budget bill with virtually no debate, allows First Energy to value biomass REC’s from Burger more than RECs generated by wind, solar, or any other form of renewable energy.³

“While Ohio’s growing solar and wind producers will get one REC per MW, First Energy will be able to create “phantom” RECs – based on no power created or renewable energy investment made. It’s a magic trick which could make Ohio’s emerging renewable energy industry disappear, “ said Reisinger.

The PUCO also rejected warnings filed by the American Wind Energy Association that the Burger Amendment could drown out investment in other technologies. AWEA had argued in filings that the PUCO’s approval of FirstEnergy’s application could inflict “catastrophic effects on Ohio’s renewable energy marketplace” leading to a “‘death spiral’ for Ohio’s [RES].”⁴

Solar, hydropower, and other renewable energy industries—including other biomass facilities—will be placed at a severe disadvantage as a result of this decision.

“The PUCO just gave FirstEnergy a blank check to burn biomass without any prior review to determine whether or not the material is actually renewable —and to receive a windfall profit for doing so,” said Reisinger.

As a result of the PUCO’s decision, FirstEnergy will be allowed to flood Ohio’s renewable energy marketplace with disproportionately weighted RECs. In fact, FirstEnergy might not have to undertake any additional renewable energy projects to meet its REC requirements in 2025.

“It is unbelievable to think that the General Assembly intended for FirstEnergy to be able to satisfy the full extent of its RES obligations with one questionable facility. And yet, that’s what today’s action by the PUCO has just allowed,” said Reisinger.

Sierra Club Ohio reaction:

“Senate Bill 221 was created to inspire investments in green technology and to create green jobs. Burning trees is not green. We need forests to clean our air, protect our watersheds, and create beautiful landscapes. Instead of creating clean and green wind and solar facilities that put Ohioans back to work, FirstEnergy now has permission to clear cut Ohio forests and to make unfair financial gains doing so,” said Jennifer Miller, Conservation Coordinator, Sierra Club Ohio.

Buckeye Forest Council reaction:

“It appears that, with the approval of the largest biomass tree burner in the country, the PUCO is going to rubberstamp all biomass permits in Ohio. All Ohioans who enjoy the shade from Ohio trees should be saddened. Approval of these permits could clear all Ohio’s forests in 10 years, just to feed these dirty old utilities. At the same time, increased greenhouse gas and soot pollution threaten Ohioans’ health,” said Cheryl Johncox, Interim Executive of the Buckeye Forest Council.

³ FirstEnergy, in its official filings, has estimated that Burger RECs could be value as much as 4.5 times all other RECs. PUCO Case No. 09-1940-EL-REN, FirstEnergy Application at p.26.

⁴PUCO Case No. 09-1940-EL-REN, American Wind Energy Association Comments at pp. 2, 5.

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The mission of the Ohio Environmental Council (OEC) is to secure healthy air, land, and water for all who call Ohio home. The OEC is Ohio's leading advocate for fresh air, clean water, and sustainable land use. The OEC has a 40-year history of innovation, pragmatism, and success. Using legislative initiatives, legal action, scientific principles, and statewide partnerships, the OEC secures a healthier environment for Ohio's families and communities. For more information, visit www.theOEC.org.