ORIGINAL

IN THE SUPREME COURT OF OHIO

The Ohio Environmental Council, Appellant, v. The Public Utilities Commission of Ohio, Appellee.	)))))))))))	Case No. 10-1977 Appeal from the Public Utilities Commission of Ohio Case No. 09-1940-EL-REN

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FILED BY FIRSTENERGY SOLUTIONS CORPORATION BY THE OHIO ENVIRONMENTAL COUNCIL

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I. INTRODUCTION

On August 11, 2010, the Public Utilities Commission of Ohio ("PUCO" or "Commission") certified FirstEnergy Solutions Corporation's ("FES") R.E. Burger power plant in eastern Ohio as an eligible renewable energy resource facility.[1] The certification will allow FES to use the energy generated at the facility to satisfy all or a portion of the company's renewable energy obligations pursuant to R.C. 4928.64 (Ohio's "Renewable Energy Standard").[2] The Ohio Environmental Council ("OEC") filed comments on the docket, a motion to dismiss, and, following the Commission's certification of the facility, the OEC and the Office of the Ohio Consumers' Counsel ("OCC") filed a Joint Application for Rehearing.[3] The OEC/OCC Joint Application for Rehearing argued that the PUCO's certification order was unlawful and unreasonable for several reasons, resulting in violations of both Ohio law and the United States Constitution. Pursuant to R.C. 4903.10, the OEC/OCC Application for Rehearing was denied as a matter of law when it was not taken up by the Commission within thirty days of its filing. At the point that the Application for Rehearing was denied as a matter of law, the Commission's Opinion and Order became final. Aside from an appeal at this court, the OEC has no other recourse through which to challenge the certification order.

On November 15, 2010, the OEC filed the present appeal of the final order issued by the Commission certifying the facility. On January 18, 2011, FES filed both a Motion for Leave to Intervene as an Appellee in this proceeding and a Motion to Dismiss the OEC's appeal. FES's Motion to Dismiss provides no persuasive explanation of why the Commission's denial of the

[1] August 11, 2010, Finding and Order, PUCO Case No. 09-1940-EL-REN.
[2] The OEC and other parties including the Office of the Ohio Consumers' Counsel, the American Wind Energy Association, the Environmental Law & Policy Center, and the Natural Resources Defense Council have consistently argued that certification of this facility would be both contrary to Ohio law and could have a devastating impact on the renewable energy industry in Ohio.
[3] Attached as Exhibit A.

OEC/OCC Application for Rehearing is not a final order. Accordingly, the Motion should be denied.

II. ARGUMENT

A. The Commission Entered a Final Order Certifying the R.E. Burger Facility as a Renewable Energy Resource Facility, and Later the OEC's Application For Rehearing Was Denied as a Matter of Law.

FES supports its Motion to Dismiss by arguing that the Commission has failed to issue a final order in this matter and that, therefore, the OEC's appeal is "premature."[3] This argument is false. R.C. 4903.13 provides that this court has jurisdiction to hear appeals of final orders issued by the Public Utilities Commission of Ohio. The OEC is properly appealing a final opinion and order by the PUCO. Following the Commission's certification order on August 11, 2010, the OEC followed PUCO procedure and filed an Application for Rehearing pursuant to R.C. 4903.10 and Ohio Administrative Code ("O.A.C.") 4901-1-35(A). The Commission never acted on the Application for Rehearing. Pursuant to R.C. 4903.10, "If the commission does not grant or deny such application for rehearing within thirty days from the date of filing thereof, it is denied by operation of law." Therefore, the Application for Rehearing was denied as a matter of law on October 11, 2010, which was thirty days after it was filed.

FES attempts to argue that because the Commission requested parties to file comments on the proper way to calculate and award certain renewable energy credits ("RECs") on the Burger docket, that therefore the PUCO has not issued a final order certifying the Burger facility. This argument is a red herring that should be rejected by this court. The Commission issued an opinion and order certifying the Burger facility as a renewable energy resource facility, and the OEC/OCC Application for Rehearing sought a reconsideration of that decision. The

[3] FES Motion to Dismiss at 3.

Commission sought comments on REC calculation issues, but this does not mean that the opinion and order is not final. The solicitation of comments on REC matters is an ancillary issue that has no bearing on the final order certifying the Burger plant as a renewable energy facility. It is that final order that is subject of this appeal.

B. FES Misapplies Case Law to Support its Argument that the OEC's Appeal is Premature.

Further, to support its position that the PUCO's certification of the Burger facility was not a final order, FES relies on two cases that do not support its argument. FES first cites case law in which this court stated that "An interim order on appeal in a pending commission proceeding will not be considered by this court."[4] FES also cites a second case in which the appellant questioned whether the Commission proceeding was primarily a ratemaking case or an accounting case. This court held that the appellant lacked jurisdiction to appeal. But there was no final decision on an application at issue in the case FES cites; the PUCO had merely ordered the appellant to observe certain regulatory requirements during the proceeding.[5] The OEC does not dispute the fact that only final Commission orders may be appealed. The OEC's appeal is distinguishable from the cases cited, however, because in those cases, the PUCO had not issued an approval or disapproval of an application at issue.[6] In this proceeding, the Commission has issued a final certification decision and denied an application for rehearing. The cases cited by FES did not involve final orders by the Commission in which applications for rehearing had been filed and denied. Therefore, the case law cited by FES does not support its argument that the OEC's appeal is premature.

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[4] *Cincinnati Gas & Elec. Co. v. Pub. Util. Comm*, 103 Ohio St.3d 398, 400.
[5] *Cincinnati v. Pub. Util. Comm.* (1992), 63 Ohio St.3d 366
[6] Id.

III. CONCLUSION

FES's Motion to Dismiss should be rejected by this court because it is clear that the Public Utilities Commission of Ohio issued a final order certifying the R.E. Burger plant as a renewable energy facility and denied an application for rehearing challenging that certification. The order is final and the OEC may only appeal the decision to this court.

Respectfully Submitted,

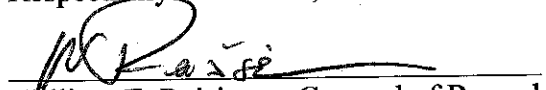

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EXHIBIT A

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

APPLICATION FOR REHEARING
BY
THE OHIO ENVIRONMENTAL COUNCIL AND THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Ohio Environmental Council ("OEC") and the Office of the Ohio Consumers' Counsel ("OCC") hereby respectively submit this Application for Rehearing pursuant to R.C. 4903.10 and O.A.C. 4901-1-35(A) regarding the Finding and Order issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on August 11, 2010, in the above-captioned case. The undersigned parties maintain that the Commission's decision to certify FirstEnergy Solutions' ("FES") R.E. Burger plant as an eligible renewable energy resource generating facility utilizing biomass fuel was unlawful and unreasonable for the following reasons:

A. **Assignment of Error 1: The Commission Erred When the Burger Application Was Certified In Violation of Ohio Adm. Code Rule 4901:1-40-01(E).**

B. **Assignment of Error 2: The Commission Erred by Certifying the Burger Application Without Elaborating on its Finding That Biomass Energy is "Conditioned Upon Sustainable Forest Management" in Violation of R.C.4903.09.**

C. **Assignment of Error 3: The Commission Erred in its Application of R.C. 4928.65 Because it Results in Economic Discrimination and is a Violation of the United States Constitution.**

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D. Assignment of Error 4: The Commission Erred Because its Application of R.C. 4928.65 Will Achieve an Absurd, Unreasonable, and Unlawful Result Not Intended by the Legislature.

The reasons for granting the Application for Rehearing are more fully explained in the accompanying memorandum in support.

WHEREFORE, the undersigned parties respectfully request that the Commission grant their Application for rehearing in the above-captioned matter.

Respectfully submitted,

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

The undersigned parties maintain that the Commission's decision to grant FES's Application for Certification of its R.E. Burger facility was unlawful and unreasonable because: (1) The application fails to include important required information; (2) The Commission failed to review the application in accordance with the Ohio Adm. Code; (3) The certification results in economic discrimination in violation of the United States Constitution; and (4) Approval could result in absurd and unreasonable consequences that deny consumers the intended benefits of Ohio's renewable energy mandates. For the foregoing reasons, a rehearing on this matter is proper.

I. Assignment of Error 1: The Commission Erred When the Burger Application Was Certified In Violation of Ohio Adm. Code Rule 4901:1-40-01(E).

The Commission's order approved FES's application without requiring FES to demonstrate that the application fully complies with Ohio law regarding biomass energy, violating Ohio Administrative Code 4901:1-40-01(E). The Commission correctly identified the criteria that must be satisfied by applicants for renewable certification. As the Commission order stated, applicants must demonstrate that the subject facility satisfies the following criteria:

> (a) The generation produced by the renewable energy resource generating facility can be shown to be deliverable into the

state of Ohio, pursuant to Section 4928.64(B)(3), Revised Code.

(b) The resource to be utilized in the generating facility is recognized as a renewable energy resources pursuant to Sections 4928.64(A)(1) and 4928.01(A)(35), Revised Code, or a new technology that may be classified by the Commission as a renewable energy resources pursuant to Section 4928.64(A)(2), Revised Code.

(c) The facility must satisfy the applicable placed-in service date, delineated in Section 4928.64(A)(1), Revised Code.

R.C. 4928.01(A)(35), referenced in paragraph (b) above, includes "biomass energy" as an eligible renewable resource, and the above criteria accurately reflect the requirements outlined in the Revised Code.

However, the Commission must also consider its own Alternative and Renewable Energy rules, found in the Ohio Administrative Code, for the precise definition of the eligible resources listed in the statute. Paragraph (b) does not reference the Ohio Adm. Code 4901:1-40-01(E), which contains the definition of "biomass energy":

> **'Biomass energy' means energy produced from organic material derived from plants or animals and available on a renewable basis,** including but not limited to: agricultural crops, tree crops, crop by-products and residues; wood and paper manufacturing waste, including nontreated by-products of the wood manufacturing or pulping process, such as bark, wood chips, sawdust, and lignin in spent pulping liquors; forestry waste and residues; other vegetation waste, including landscape or right-of-way trimmings; algae; food waste; animal wastes and by-products (including fats, oils, greases and manure); biodegradable solid waste; and biologically derived methane gas. (Emphasis added.)

The rule unambiguously states that the material utilized must be "available on a renewable basis." FES provides a list of possible biomass types to be used. While the list contains types of biomass, FES avoids identifying what specific type of fuel will actually be used. Further, the Application provides no information on whether any of the fuels on the list is

actually available on a renewable basis. This is critical when the size of the project and the amount of fuel that will be utilized for this project are considered. Therefore, the Commission's evaluation of FES's application was incomplete.

In the order, the PUCO states that "Since the definition of biomass energy includes a wide variety of qualifying materials, the fact that one particular type of biomass energy may not be available is not a valid basis for denying certification."[1] But if the Company chooses to employ a material that is unavailable on a renewable basis, it would be out of compliance with the rule. To determine whether a particular fuel satisfies the rule, the Commission must necessarily know what that fuel is and its origin.

Further, the PUCO's observation that the Company lists a "wide variety of qualifying materials" demonstrates uncertainty on the part of FES as to what type of fuel may be used. The Commission should have evaluated whether FES's intended source(s) of biomass fuel satisfies the definition of "biomass energy" found in 4901:1-40-01(E). The Commission only inquired into whether FES intended to utilize biomass material, not whether FES's material would allow the facility to qualify as a "biomass energy" facility in accordance with the definition in the Ohio Adm. Code.

Moreover, 4901:1-40-01(E) explicitly states that biomass energy must be produced from organic material that is "available on a renewable basis." The Commission's order describes the renewable basis criterion as irrelevant:

> While an applicant bears the responsibility to demonstrate that its proposed fuel type qualifies as a renewable resource, **the availability of that resource is not a relevant consideration** when evaluating an application for certification.[2]

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[1] Opinion and Order at 5.

[2] Opinion and Order at 5 (emphasis added).

The order contradicts 4901:1-40-01(E), which clearly states that eligible biomass fuel must be "available on a renewable basis." FirstEnergy made no attempt in its application, or in response to intervenor discovery, to describe its intended fuel source, or to show that all of the possible fuel types listed are available on a renewable basis. Thus, there is no way the Commission could have known what type of biomass FirstEnergy intended to use, and therefore no way to know whether that fuel would satisfy the PUCO's own criterion that any fuel listed by FES as a possibility was "available on a renewable basis." The Commission's order was unlawful and unreasonable because the Commission did not require FES to demonstrate that its facility would utilize "biomass energy" as defined in the Ohio Adm. Code.

II. Assignment of Error 2: The Commission Erred by Certifying the Burger Application Without Elaborating on its Finding That Biomass Energy is "Conditioned Upon Sustainable Forest Management" in Violation of R.C.4903.09.

The Commission's order states that "the use of forest resources as biomass energy is conditioned upon sustainable forest management operations."[3] However, the order fails to elaborate on what this condition will entail in practice and when and how the oversight will occur. The failure of the Commission to outline how this oversight will be exercised or outline the Company's commitment to comply with this position in its order violates R.C. 4903.09 and is cause for concern for all parties to this and future biomass energy applications.

The Commission recognizes that "the use of forest resources as biomass energy is conditioned upon sustainable forest management operations."[4] This important, laudable statement is unsupported by a basic structure for determination of sustainability. Therefore, the problem with the Commission's order is a basic one. The Commission's Opinion and Order rejects arguments raised by OCEA which contend that detailed information about biomass

[3] Id.

[4] Id.

sourcing and procurement sustainability must be included in an application.[5] Yet, as noted above, the order states that certification of biomass resources is conditioned upon sustainable forest management operations. These two features of the Opinion and Order cannot be reconciled.

The Opinion and Order fails to provide findings of fact demonstrating the material listed by FES is available on a renewable basis in violation of R.C. 4903.09, which states that:

> In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

The Order states that the Company's request for proposal ("RFP") "requires bidders to provide information" on the sustainability of the material.[6] However, the Opinion and Order does not set forth the reasons prompting the certification approval and is insufficient for several reasons.

First, there is no specific sustainability criteria established by the Commission or the Company providing a foundation or explanation as to what is meant by sustainability in this case. Second, there is no commitment by the Company to use any of the bidders responding to this RFP. Third, the Commission, in its order, does not state that it will follow-up in any way to ensure this condition has been met. Thus, the Opinion and Order is insufficient because it provides no explanation on what "sustainable forest management operations" means as a condition of approval and provides no findings of fact that FES will comply with this condition. Therefore, the Opinion and Order violates R.C. 4903.09 because it provides no reasons

[5] Opinion and Order at 4.

[6] Opinion and Order at 6.

prompting the decision by the PUCO to certify the facility or any substantiation to demonstrate Company compliance with its condition for approval.

In order to demonstrate that biomass energy is derived from sources where sustainable forest management practices are utilized, the biomass energy source must be identified in order by the Company to demonstrate whether it was harvested using sustainable forest management operations; or in the alternative, procurement standards must be enumerated. Only then can an applicant, the Commission, or an interested party determine whether or not sustainable forest management operations are practiced at the source location.

The Commission has ruled that an applicant need not describe where biomass is derived or its composition, much less describe what precautions are taken to establish its environmental and economic sustainability. As the Commission's certification order demonstrates, general representations will suffice for certification. This makes the Commission's parallel ruling, that "the use of forest resources as biomass energy is conditioned upon sustainable forest management operations" essentially meaningless.

Accordingly, and unless the Commission wished to render this important point permanently meaningless, some structure for review of sustainable forest management operations by the Commission or interested parties must be crafted as a part of this proceeding. Without the development of such a structure or review process, the Commission's Opinion and Order violates R.C. 4903.09 and cannot be reconciled with itself.

III. Assignment of Error 3: The Commission Erred in its Application of R.C. 4928.65 Because it Results in Economic Discrimination and is a Violation of the United States Constitution.

R.C. 4928.65 sets forth a renewable energy credit ("REC") calculation that only applies to certain biomass energy facilities and discriminates against others. The relevant portion of the REC calculation statute is excerpted below:

> The public utilities commission shall adopt rules specifying that one unit of credit shall equal one megawatt hour of electricity derived from renewable energy resources, **except that, for a generating facility of seventy-five megawatts or greater that is situated within this state and has committed by December 31, 2009, to modify or retrofit its generating unit or units to enable the facility to generate principally from biomass energy by June 30, 2013, each megawatt hour of electricity generated principally from that biomass energy shall equal, in units of credit, the product obtained by multiplying the actual percentage of biomass feedstock heat input 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 as provided under division (C)(2)(b) of section 4928.64 of the Revised Code by the then existing market value of one renewable energy credit, but such megawatt hour shall not equal less than one unit of credit.** (Emphasis added.)

The law establishes that one megawatt hour of electricity generated from renewable sources shall equal one REC.[7] However, the statute also provides an exception for certain biomass generation that meets additional criteria: located in Ohio; 75 MW or greater; and has committed by December 31, 2009 to burn "principally" biomass by June 30, 2013. For the sources that satisfy these additional criteria, the statute assigns a special formula for calculating RECs. The special formula provides a potential "multiplier" to any facility that satisfies these criteria.

In practice, however, this statute can only apply -- and was only intended to apply -- to one facility: FES's R.E. Burger power plant. No other biomass energy facility could possibly meet these criteria, and thus no other facility could be eligible for the higher REC unit rate. Therefore, R.C. 4928.65 -- "the Burger Amendment" -- gives an economic advantage to one renewable energy facility, and neglects to give that economic advantage to all other renewable generation, including out-of-state power producers. This is economic discrimination.

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[7] R.C. 4928.65

R.C. 4928.65 is unconstitutional under a commerce clause analysis because it discriminates against out-of-state generation. The U.S. Constitution's "negative commerce clause," a corollary to Article I, Section 8, clause 3, limits the power of states to discriminate against interstate commerce by enacting regulatory measures designed to benefit in-state economic interests and burdening out-of-state competitors.[8] For example, in *New Energy Co. of Indiana v. Limbach*, Ohio's regulations providing favorable tax regulations for in-state biofuel producers were challenged on commerce clause grounds.[9]

In a unanimous opinion drafted by Justice Scalia, the U.S. Supreme Court held that the disparate economic treatment was unconstitutional. According to the Court, the Ohio law deprived "certain products of generally available beneficial tax treatment because they are made in certain other States" and was thus unconstitutional.[10] In other words, the biofuel law was unconstitutional because conferred a financial benefit upon in-state biofuel production, which was not conferred upon out-of-state production.

Likewise, R.C. 4928.65 is unconstitutional on its face. By allowing one in-state biomass generator a favorable calculation of RECs not available to out-of-state generators, out-of-state competitors are put at an economic disadvantage. In-state generation receives an economic advantage that is unavailable to similar facilities located out of the state. Just as the Ohio statute in *Limbach* gave a favorable tax treatment for biofuels that were produced in Ohio, R.C. 4928.65 only gives favorable economic treatment for biomass generation located in Ohio, and specifically

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[8] *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269 (1998). A non-discriminatory law that nonetheless burdens interstate commerce may still be struck as unconstitutional. In such cases, the court must balance the benefits of to the government against the burden on interstate commerce. *Loren J. Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

[9] Id.

[10] Id.

to one Ohio Company. Thus, the statute is unconstitutional and should not be enforced or allowed by the PUCO.

IV. Assignment of Error 4: The Commission Erred Because its Application of R.C. 4928.65 Will Achieve an Absurd, Unreasonable, and Unlawful Result Not Intended by the Legislature.

The Commission's interpretation and application of the Burger Amendment will achieve results that are absurd and contrary to the intent to the S.B. 221. The Ohio Supreme Court has stated that the "General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences."[11] FirstEnergy estimates in its Application for Renewable Certification that using the formula outlined in R.C. 4928.65, it will receive a REC multiplier of 4.5.[12] This means that Burger RECs will be 4.5 times more valuable than all other non-solar RECs generated in Ohio.

Applying the REC multiplier formula to the Burger plant will produce results that are astounding and utterly absurd. Most notably, the application of R.C. 4928.65 could obviate the need for the FirstEnergy utilities to undertake any additional renewable energy projects through 2025. Based on its application, FES would be able to satisfy all of its non-solar renewable portfolio standard obligations through the year 2025 simply by fueling the Burger plant with biomass. In fact, the company may even be able to satisfy its 2025 obligations in only one year of operation at the Burger plant.[13] In addition, because the equation set forth in the Burger Amendment is tied to the market price for non-solar RECs, the statute could result in what the

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[11] *State ex rel. Cooper v. Savord* (1950), 153 Ohio St. 367, 371, 92 N.E.2d 390, 392

[12] Application at p.26.

[13] FirstEnergy's Application assumes a REC market price of $10, which results in a 4.5 multiplier for 2010. Using a 4.5 multiplier, and assuming that the Burger plant operates at a 90 percent capacity factor, FirstEnergy could satisfy its non-solar renewable portfolio standard obligations through 2017 in one year of operation. The number of RECs would likely increase substantially, however, because the multiplier is tied to the market price for non-solar RECs; therefore, as Burger RECs enter the market, depressing REC prices, the multiplier will increase.

American Wind Energy Association ("AWEA") has called a "death spiral" for Ohio's renewable portfolio standard.[14] As Burger RECs flood the REC market in Ohio, REC prices will be depressed, further driving up the Burger multiplier, resulting in the renewable portfolio standard "death spiral" that AWEA has warned of. As stated in *Cooper*, a court must act to avoid unreasonable or absurd results:

> Hence it is the duty of the courts, if the language of a statute fairly permits or unless restrained by the clear language thereof, so to construe the statute as to avoid such a result.[15]

Here, the PUCO must act to prevent the Burger Amendment from compromising Ohio's REC market and the development of other forms of renewable energy.

Finally, the likely effect of the Burger multiplier, as presented in the statute, is a result contrary to the stated policy of S.B. 221, which is the development of "a diversity of supplies and suppliers."[16] The statute also intended electric distribution utilities to obtain a steadily increasing amount of their standard service offer electricity to customers from "alternative energy resources."[17] While this may include energy produced from biomass, it certainly was not the intention of the legislature to obtain all of the alternative energy, other than the separately mandated solar amounts, from one source. Ohio Revised Code 1.49(E) notes that a court, when considering the intent of the legislature, may consider, *inter alia*, "the consequences of a particular construction." Here, the Burger Amendment shows a real potential to harm Ohio's nascent renewable energy development. A true diversity of supplies and suppliers, including wind and solar development, is an important part of Ohio's energy future, as required in R.C. 4928.02(C). Specifically, R.C. 4928.02(C) requires, as Ohio policy, to:

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[14] American Wind Energy Association, Comments at p. 5.

[15] *State ex rel. Cooper v. Savord* (1950), 153 Ohio St. 367, 371, 92 N.E.2d 390, 392.

[16] R.C. 4928.02(C).

[17] R.C. 4928.64(B).

> Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities.

While the Burger plant modification may sustain employment in the area, it is clear that the solar and wind industries developing in Ohio have demonstrated potential to create employment that would benefit Ohioans.[18] Thus, all forms of renewable energy should be on equal footing, and the PUCO should encourage the development and utilization of all forms of renewable energy. The Commission should not employ the Burger Amendment in a way that discriminates against other forms of renewable energy and leads to unreasonable and absurd consequences.

V. CONCLUSION

The undersigned parties request a rehearing on the renewable energy certification of the Burger plant. The Commission's decision to grant FES's Application for Certification of its R.E. Burger facility was unlawful and unreasonable because the application did not properly address the statutory criteria or the Commission's own rules. In addition, the certification results in economic discrimination in violation of the United States Constitution. Finally, the approval will likely result in absurd and unreasonable consequences that deny residential and other consumers the intended benefits of Ohio's renewable energy mandates. For these reasons, the Commission should grant a rehearing in this matter.

Respectfully submitted,

/s/ William T. Reisinger
William Reisinger, Counsel of Record

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[18] See McGinn, Daniel: *Project Green: The Power of the Sun – The Search for Renewable-Energy Sources is Making Clean-Tech Jobs Hot*, Newsweek, October 8, 2007: The article notes that "[T]he Toledo area already has nearly 6,000 people employed in the solar industry."

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class and/or electronic mail this 10th day of September, 2010.

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I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail this 21st day of January, 2011.

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