

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

12
RECEIVED-DOCKETING DIV
2009 SEP 21 AM 11:53

PUCO

| | | |
|---|---|-------------------------------------|
| In The Matter of the Application of Duke |) | Case No. 08-920-EL-SSO |
| Energy Ohio, Inc. |) | Case No. 09- 434 -EL-REN |
| For Approval of a Residential Solar Renewable |) | Case No. 09- -EL-ATA |
| Energy Credit Purchase Program Agreement |) | |
| And Tariff |) | |

APPLICATION OF DUKE ENERGY OHIO, INC.
FOR APPROVAL OF A SOLAR RENEWABLE ENERGY CREDIT
PURCHASE PROGRAM AND TARIFF

Applicant, Duke Energy Ohio, Inc. (Duke Energy Ohio) is an Ohio Corporation engaged in the business of supplying electric generation, transmission and distribution service to approximately 660,000 customers in southwestern Ohio. Duke Energy Ohio is a public utility as defined by R.C. 4905.02 and R.C. 4905.03. Duke Energy Ohio submits the attached solar renewable energy credit agreement (Agreement) pursuant to Paragraph 31 of its Stipulation and the Commission's Order in Duke Energy Ohio's Electric Security Plan, Case No. 08-920-EL-SSO. In support of this Application, Applicant states as follows:

1. Duke Energy Ohio is required to meet certain alternative energy resource benchmarks, including compliance with solar renewable benchmarks pursuant to 4928.64, Revised Code.

2. Duke Energy Ohio has agreed to make available to residential customers in its service territory who purchase retail electric generation service from Duke Energy Ohio, a residential renewable energy credit (REC) purchase program. Duke Energy Ohio will enter into

285711

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician Sm Date Processed SEP 21 2009

new REC purchase agreements through December 31, 2011. The contracts will have a term consistent with Duke Energy Ohio's ESP term which ends in 2011 and will terminate if Duke Energy Ohio does not have a Commission-approved cost recovery mechanism or if the Commission does not approve Duke Energy Ohio's request for recovery of the REC purchase price or reasonable administrative costs.

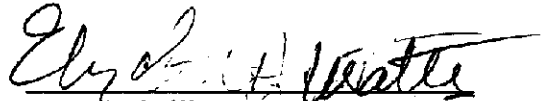
3. Duke Energy Ohio requests approval of the Agreement attached hereto as Exhibit 1, which provides that the Duke Energy Ohio will purchase renewable energy credits from residential customer-sited solar photovoltaic resources within the State of Ohio that have been certified and approved by the Commission. The fully aggregated environmental attributes associated with one megawatt hour of electricity derived from the customer's resource shall be equivalent to one renewable energy credit.

4. Duke Energy Ohio shall pay for the actual REC(s) generated by the customer at the market price in effect at contract inception. The market price shall remain fixed during the term of the agreement.

5. All reasonable costs to Duke Energy Ohio associated with this residential renewable energy credit program and purchases shall be recoverable through Duke Energy Ohio's Rider FPP (fuel and purchased power).

WHEREFORE: Applicant, Duke Energy Ohio, respectfully requests that the Commission approve this Application with attached agreement and proposed tariff, including provisions for cost recovery as set forth above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth H. Watts", is written over a horizontal line.

Amy B. Spiller
Associate General Counsel
Elizabeth H. Watts
Assistant General Counsel
Duke Energy Ohio Business Services
Columbus Office:
155 East Broad Street
Suite 2100
Columbus, Ohio 43215
(614) 222-1331

Cincinnati Office:
2500 Atrium II, 139 East Fourth Street
P.O. Box 960
Cincinnati, Ohio 45201-0960
(513) 419-1871

RIDER REC

RENEWABLE ENERGY CERTIFICATE PURCHASE OFFER RIDER

APPLICABILITY

This rider is applicable to all residential customers currently taking electric generation service at their primary residence. This rider will be available until December 31, 2011.

DEFINITION OF RENEWABLE ENERGY CERTIFICATES

Renewable Energy Certificate ("REC") shall mean tradable units that represent the commodity formed by unbundling the environmental attributes of a unit of renewable energy from the underlying electricity. One REC would be equivalent to the environmental attributes of one MWH of electricity from a renewable or environmentally friendly generation source. This rider only applies to RECs generated by a residential electric customer's owned or leased renewable energy project that has been certified as an Ohio Renewable Energy Resource Generation Facility by the Public Utilities Commission of Ohio (<http://www.puco.ohio.gov/PUCO/Forms/Form.cfm?id=9464>). Such facility must be located in the Company's service territory.

"Renewable energy resource" means solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, fuel derived from solid wastes, as defined in section 3734.01 of the Ohio Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion, biomass energy, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. "Renewable energy resource" includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or distributed generation system used by a customer to generate electricity from any such energy. As used in division (A)(35) of this section, "hydroelectric facility" means a hydroelectric generating facility that is located at a dam on a river.

RENEWABLE ENERGY CERTIFICATE PURCHASE PRICE

1. RECs created from a solar photovoltaic facility.....\$337.50 per REC for 2009 vintage year
2. RECs created from other renewable sources.....\$10.00 per REC for 2009 vintage year

NET MONTHLY BILL

Purchase of RECs under this rider will not affect a customer's bill.

TERMS AND CONDITIONS

1. The customer shall enter into a REC Purchase Agreement with the Company (see Exhibit 1) which contains all of the terms and conditions related to the Company's purchase of RECs.

SERVICE REGULATIONS

The billing for service and all conditions applying thereto, are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to the Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio

Filed pursuant to an Order dated _____ in Case No. _____ before the Public Utilities Commission of Ohio.

Issued: _____

Issued by Julie Janson, President

Effective: _____

Residential Renewable Energy Credit Purchase Offer Agreement

THIS RESIDENTIAL RENEWABLE ENERGY CREDIT PURCHASE OFFER AGREEMENT ("Agreement") is made and entered into by and between Duke Energy Ohio, Inc., hereinafter called the "Company," and _____, hereinafter called the "Customer," (collectively the "Parties" or individually the "Party"), and is effective as of _____, 20____.

WITNESSETH

WHEREAS, the Company is an electric distribution utility and electric light company, as defined in R.C. §4928.01(A); and

WHEREAS, Customer is a residential customer, currently taking electric service at their primary residence under one of the Company's Residential Tariffs (RS, ORH, TD, and RS3P).

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

1. Residential Customer: Customer represents and warrants that Customer is a residential customer of Company, and that Customer owns or leases a customer-sited renewable energy project in the state of Ohio that has been certified as a Ohio Renewable Energy Resource Generation Facility by the Public Utilities Commission of Ohio (the "Project") and is registered with the Generating Attributes Tracking System ("GATS") or the Midwest Renewable Energy Tracking System ("MRETS"). Customer further represents and warrants that Customer has signed and completed the Company's Interconnection documents contained in Rate IS – Interconnection Service and currently participates in the Company's Net Metering Rider, Rate NM – Net Metering.

2. Fully Aggregated REC(s): Customer expects its Project will generate one or more REC(s), on an annual basis, and understands that fully aggregated environmental attributes associated with one megawatt-hour of electricity derived from Customer's Project is equivalent to one (1) REC. Customer shall be responsible for tracking and recording renewable energy that amounts to less than one (1) megawatt-hour. Such renewable energy shall not be counted as one (1) REC until such time it amounts to one (1) megawatt-hour of electricity derived from Customer's Project.

3. Purchase Price and Payment: Company hereby agrees to purchase the whole REC(s) from Customer's Project. The purchase price for the REC(s) shall be determined by the Company. The fixed purchase price and purchase commitments is \$337.50 per 2009 vintage solar REC and \$10.00 per non-solar REC for 2009. The Company reserves the right to update this on an annual basis by reference to current market price. The Company will pay for actual generation of whole RECs for a one-year calendar period at the end of the generation period.

4. Project Criteria: Customer acknowledges and agrees that the Project must meet the following criteria:

- i. Customer must attach a copy of the Ohio Renewable Energy Resource Generation Facility certification (Attachment A.)
- ii. Project must have a utility grade meter provided by the customer, at its own cost and expense, on the output of the inverter where kilowatt-hours can be measured and verified.
- iii. Project must be attached as a permanent fixture at the Customer's property (service address).
- iv. Renewable energy delivered from a Project shall be calculated at a minimum by reading the output of the meter at two different points of the year (*i.e.*, January 1 to December 31) and/or in accordance with the GATS or MRETS reporting requirements.

5. Term: The initial term of this Agreement is from the Effective Date through December 31, 2011. The terms will be extended on an annual renewal basis unless the Agreement is terminated pursuant to paragraph 9 below.

6. Assignment of REC(s): Customer shall direct the REC(s) into GATS or MRETS system to the Company's account. The Company shall require and shall only accept REC(s) that Customer has created in the GATS or MRETS system. Customer shall also complete the Affidavit of Performance, attached hereto as Attachment A.

7. Inspection and Audit: After providing reasonable notice, Company has the right to inspect and audit the performance of the Project. Company will provide Customer, upon written request, a copy of any report generated as a result of the inspection and audit. Notwithstanding the foregoing, it shall be the sole responsibility of Customer to operate, maintain, repair, and inspect the Project to ensure its proper working order.

8. Attestation: Customer hereby agrees to submit an Affidavit of Performance, at the end of each calendar year, attesting to the current condition of the Project and the number of REC(s) the Project delivered. Customer shall create and maintain a GATS or MRETS account to facilitate the transfer REC(s) once such REC(s) are received and accepted in the Company's GATS and/or MRETS accounts.

9. Termination: This Agreement shall immediately terminate upon the following occurrences: (i) Project ceases to be a permanent fixture on Customer-owned property; (ii) Project materially fails to function in such a manner as to produce renewable energy megawatt hours; (iii) Public Utilities Commission of Ohio revokes the Project's certification; (iv) the Commission disallows cost recovery for any REC(s) the Company purchased in connection with this Agreement; or (v) the expiration of the Agreement term.

10. Limitation of Liability and Indemnification: Customer shall assume all liability for and shall indemnify Company for any claims, losses, costs, and expenses of any kind or character to the extent that they result from Customer's negligence in connection with the design, construction or operation of its Project. Such indemnity shall include, but is not limited to, financial responsibility for: (a) Company's monetary losses; (b) reasonable costs and expenses of defending an action or claim made by a third person; (c) damages related to the death or injury of a third person; (d) damages to the property of Company; (e) damages to the property of a third person; (f) damages for the disruption of the business of a third person. This paragraph does not create a liability on the part of the Customer to the Company or a third person, but requires indemnification where such liability exists. The limitations of liability provided in this paragraph do not apply in cases of gross negligence or intentional wrongdoing. Notwithstanding the foregoing, Customer shall reimburse the Company for any regulatory penalties assessed against the Company for non-compliance with alternative energy benchmarks due to the negligence of the Customer or the failure of the Project for which the Customer has control and responsibility.

11. Notices: Unless otherwise stated herein, all notices, demands, or requests required or permitted under this Agreement must be in writing and must be delivered or sent by overnight express mail, courier service, electronic mail, or facsimile transmission addressed as follows:

If to the Customer:

[Customer Name]
[Address]
[Telephone]

If to the Company:

Duke Energy Ohio, Inc.
Legal Department/Regulatory
139 East Fourth Street, Atrium II
25th Floor
Cincinnati, Ohio

or to such other person at such other address as a Party may designate by like notice to the other Party. Notice received after the close of the business day will be deemed received on the next business day by 5:00p.m., E.S.T., provided that notice by facsimile transmission will be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

12. Entire Agreement: This Agreement contains the Parties' entire understanding with respect to the matters addressed herein and there are no verbal or collateral representations, undertakings, or agreements not expressly set forth herein. No change in, addition to, or waiver of the terms of this Agreement shall be binding upon any of the Parties unless the same is set forth in writing and signed by an authorized representative of each of the Parties.

13. Assignment: Customer may not assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the Company. No assignment of this Agreement will relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained.

14. Legal Jurisdiction and Interpretation: This Agreement in its entirety will be administered and subject to the laws of the state of Ohio.

15. Acceptance: The Parties hereby acknowledge their acceptance of the terms of this Agreement by signing below:

Customer Name (Print)

Company Representative (Print)

Customer Signature

Company Representative (Signature)

Address Line 1

Address Line 1

Address Line 2

Address Line 2

Phone Number

Phone Number

Attachment A

FORM OF AFFIDAVIT

State of Ohio:

County of _____:

_____, Affiant, being duly sworn, affirmed according to law, deposes and says that:

1. I am the duly authorized representative of [the Project].
2. I have personally examined and am familiar with all information contained in the foregoing Agreement, including any exhibits and attachments, and that based upon my inquiry of those persons immediately responsible for obtaining the information contained in the Agreement, I believe that the information is true, accurate and complete.
3. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

The Statement:

As of _____, _____ continued to be in
(Date) (Project)

good working order with no material corrective actions pertaining to safety and/or operation warranting attention. Further, the Project delivered Quantity of REC(s) and I now assign those RECs to Duke Energy Ohio, Inc.

Meter Read Date

_____ Start: _____

End: _____

Sworn and subscribed before me this _____ day of _____,

_____ Month/Year

Signature of Affiant & Title

Notary Signature

Print Name and Title

Residential Renewable Energy Credit Purchase Offer Agreement

THIS RESIDENTIAL RENEWABLE ENERGY CREDIT PURCHASE OFFER AGREEMENT ("Agreement") is made and entered into by and between Duke Energy Ohio, Inc., hereinafter called the "Company," and _____, hereinafter called the "Customer," (collectively the "Parties" or individually the "Party"), and is effective as of _____, 20____.

WITNESSETH

WHEREAS, the Company is an electric distribution utility and electric light company, as defined in R.C. §4928.01(A); and

WHEREAS, Customer is a residential customer, currently taking electric service at their primary residence under one of the Company's Residential Tariffs (RS, ORH, TD, and RS3P).

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

1. Residential Customer: Customer represents and warrants that Customer is a residential customer of Company, and that Customer owns or leases a customer-sited renewable energy project in the state of Ohio that has been certified as a Ohio Renewable Energy Resource Generation Facility by the Public Utilities Commission of Ohio (the "Project") and is registered with the Generating Attributes Tracking System ("GATS") or the Midwest Renewable Energy Tracking System ("MRETS"). Customer further represents and warrants that Customer has signed and completed the Company's Interconnection documents contained in Rate IS – Interconnection Service and currently participates in the Company's Net Metering Rider, Rate NM – Net Metering.

2. Fully Aggregated REC(s): Customer expects its Project will generate one or more REC(s), on an annual basis, and understands that fully aggregated environmental attributes associated with one megawatt-hour of electricity derived from Customer's Project is equivalent to one (1) REC. Customer shall be responsible for tracking and recording renewable energy that amounts to less than one (1) megawatt- hour. Such renewable energy shall not be counted as one (1) REC until such time it amounts to one (1) megawatt-hour of electricity derived from Customer's Project.

3. Purchase Price and Payment: Company hereby agrees to purchase the whole REC(s) from Customer's Project. The purchase price for the REC(s) shall be determined by the Company. The fixed purchase price and purchase commitments is \$337.50 per 2009 vintage solar REC and \$10.00 per non-solar REC for 2009. The Company reserves the right to update this on an annual basis by reference to current market price. The Company will pay for actual generation of whole RECs for a one-year calendar period at the end of the generation period.

4. Project Criteria: Customer acknowledges and agrees that the Project must meet the following criteria:

- i. Customer must attach a copy of the Ohio Renewable Energy Resource Generation Facility certification (Attachment A.)
- ii. Project must have a utility grade meter provided by the customer, at its own cost and expense, on the output of the inverter where kilowatt-hours can be measured and verified.
- iii. Project must be attached as a permanent fixture at the Customer's property (service address).
- iv. Renewable energy delivered from a Project shall be calculated at a minimum by reading the output of the meter at two different points of the year (*i.e.*, January 1 to December 31) and/or in accordance with the GATS or MRETS reporting requirements.

5. Term: The initial term of this Agreement is from the Effective Date through December 31, 2011. The terms will be extended on an annual renewal basis unless the Agreement is terminated pursuant to paragraph 9 below.

6. Assignment of REC(s): Customer shall direct the REC(s) into GATS or MRETS system to the Company's account. The Company shall require and shall only accept REC(s) that Customer has created in the GATS or MRETS system. Customer shall also complete the Affidavit of Performance, attached hereto as Attachment A.

7. Inspection and Audit: After providing reasonable notice, Company has the right to inspect and audit the performance of the Project. Company will provide Customer, upon written request, a copy of any report generated as a result of the inspection and audit. Notwithstanding the foregoing, it shall be the sole responsibility of Customer to operate, maintain, repair, and inspect the Project to ensure its proper working order.

8. Attestation: Customer hereby agrees to submit an Affidavit of Performance, at the end of each calendar year, attesting to the current condition of the Project and the number of REC(s) the Project delivered. Customer shall create and maintain a GATS or MRETS account to facilitate the transfer REC(s) once such REC(s) are received and accepted in the Company's GATS and/or MRETS accounts.

9. Termination: This Agreement shall immediately terminate upon the following occurrences: (i) Project ceases to be a permanent fixture on Customer-owned property; (ii) Project materially fails to function in such a manner as to produce renewable energy megawatt hours; (iii) Public Utilities Commission of Ohio revokes the Project's certification; (iv) the Commission disallows cost recovery for any REC(s) the Company purchased in connection with this Agreement; or (v) the expiration of the Agreement term.

10. Limitation of Liability and Indemnification: Customer shall assume all liability for and shall indemnify Company for any claims, losses, costs, and expenses of any kind or character to the extent that they result from Customer's negligence in connection with the design, construction or operation of its Project. Such indemnity shall include, but is not limited to, financial responsibility for: (a) Company's monetary losses; (b) reasonable costs and expenses of defending an action or claim made by a third person; (c) damages related to the death or injury of a third person; (d) damages to the property of Company; (e) damages to the property of a third person; (f) damages for the disruption of the business of a third person. This paragraph does not create a liability on the part of the Customer to the Company or a third person, but requires indemnification where such liability exists. The limitations of liability provided in this paragraph do not apply in cases of gross negligence or intentional wrongdoing. Notwithstanding the foregoing, Customer shall reimburse the Company for any regulatory penalties assessed against the Company for non-compliance with alternative energy benchmarks due to the negligence of the Customer or the failure of the Project for which the Customer has control and responsibility.

11. Notices: Unless otherwise stated herein, all notices, demands, or requests required or permitted under this Agreement must be in writing and must be delivered or sent by overnight express mail, courier service, electronic mail, or facsimile transmission addressed as follows:

If to the Customer:

[Customer Name]
[Address]
[Telephone]

If to the Company:

Duke Energy Ohio, Inc.
Legal Department/Regulatory
139 East Fourth Street, Atrium II
25th Floor
Cincinnati, Ohio

or to such other person at such other address as a Party may designate by like notice to the other Party. Notice received after the close of the business day will be deemed received on the next business day by 5:00p.m., E.S.T., provided that notice by facsimile transmission will be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

12. Entire Agreement: This Agreement contains the Parties' entire understanding with respect to the matters addressed herein and there are no verbal or collateral representations, undertakings, or agreements not expressly set forth herein. No change in, addition to, or waiver of the terms of this Agreement shall be binding upon any of the Parties unless the same is set forth in writing and signed by an authorized representative of each of the Parties.

13. Assignment: Customer may not assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the Company. No assignment of this Agreement will relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained.

14. Legal Jurisdiction and Interpretation: This Agreement in its entirety will be administered and subject to the laws of the state of Ohio.

15. Acceptance: The Parties hereby acknowledge their acceptance of the terms of this Agreement by signing below:

Customer Name (Print)

Company Representative (Print)

Customer Signature

Company Representative (Signature)

Address Line 1

Address Line 1

Address Line 2

Address Line 2

Phone Number

Phone Number

Attachment A

FORM OF AFFIDAVIT

State of Ohio:

County of _____:

_____, Affiant, being duly sworn, affirmed according to law, deposes and says that:

1. I am the duly authorized representative of [the Project].
2. I have personally examined and am familiar with all information contained in the foregoing Agreement, including any exhibits and attachments, and that based upon my inquiry of those persons immediately responsible for obtaining the information contained in the Agreement, I believe that the information is true, accurate and complete.
3. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

The Statement:

As of _____, _____ continued to be in
(Date) (Project)

good working order with no material corrective actions pertaining to safety and/or operation warranting attention. Further, the Project delivered Quantity of REC(s) and I now assign those RECs to Duke Energy Ohio, Inc.

Meter Read Date

_____ Start: _____

End: _____

Sworn and subscribed before me this _____ day of _____,

_____ Month/Year

Signature of Affiant & Title

Notary Signature

Print Name and Title