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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. For Approval of a) Case No. 08-920-EL-SSO
Residential Solar Renewable Energy) Case No. 09-834-EL-UNC
Credit Purchase Program Agreement and)
Tariff.)

**COMMENTS
BY
THE OHIO CONSUMER AND ENVIRONMENT ADVOCATES**

I. INTRODUCTION

The undersigned members of Ohio Consumer and Environment Advocates (hereinafter "OCEA")¹ file the following comments with regard to Duke Energy Ohio, Inc.'s ("Duke" or "Company") proposed residential solar renewable energy credit purchase program. Duke's proposed residential renewable energy credit ("REC") program is insufficient in that it fails to conform with the settlement terms negotiated by Duke and members of OCEA in the electric security plan ("ESP") case.²

On September 21, 2009, Duke filed its Application for the approval of a residential REC program as provided for under the ESP Stipulation. The approval of the Application will affect the degree to which effective residential REC programs will be implemented in the Duke service territory and whether Duke will be able to meet the renewable benchmarks established under R.C. 4928.64(B)(2).

Additionally, the REC program Duke proposes will not encourage participation

¹ Natural Resource Defense Council, the Ohio Environmental Council, The Citizens' Coalition, the Sierra Club and the Ohio Consumers' Counsel.

² *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, Stipulation (October 27, 2008).

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and is contrary to State policy under R.C. 4928.02 (J) and (K).³ The Commission should require Duke to revise the program to conform with the program proposed by Ohio Edison Company, Toledo Edison Company and Cleveland Electric Illuminating Company (collectively “FirstEnergy”) and approved by the Commission.⁴

Duke will be recovering all of its costs for this program through its customers and therefore has no basis to be concerned about costs or effectiveness. On the other hand, the residential customers of Duke do have to pay for the program and the Commission should not permit Duke to conduct an ineffective program for which its customers must pay and from which residential customers cannot benefit.

Moreover, the Commission should not consider relieving Duke of meeting its benchmarks under R.C. 4928.64(C)(4)(a)-(c) after proposing such an ineffective REC purchase program as it has in its Application. With this program proposal, Duke does not appear to be sincere in meeting those benchmarks. If Duke is sincere in meeting the benchmarks it would propose a REC purchase program that would ensure participation by as many residential customers as possible.

³ R.C. 4928.02(F) declares that it is the state policy to “ensure that an electric utility’s transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces.” R.C. 4928.02(J) states that it is the state policy to “provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates.” R.C. 4928.02(K) identifies the state policy to “encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges and net metering.”

⁴ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Residential Renewable Energy Credit Purchase Program Agreement*, Case No. 09-551-EL-UNC, Application for Approval of Residential Renewable Energy Credit Purchase Program Agreement (June 30, 2009) at 2, ¶ 3. Approved, Finding and Order (September 23, 2009).

II. COMMENTS

- A. The Commission should require Duke to purchase RECs from residential customers who purchase generation from other suppliers based upon Duke's commitment in the ESP Stipulation.**

Under the Stipulation Duke agreed to:

Include a R.C. 4928.64 residential REC purchase program by June 30, 2009. Upon inquiry by a consumer considering the installation of renewable energy generation at the consumer's site, DE-Ohio shall make information available to the consumer on net metering, interconnection and the REC purchase program.⁵

First, Duke has been slow to file the REC program although OCC repeatedly met with Duke and Staff to devise a program that would be useful and helpful in developing residential renewable projects. Duke filed its application for the REC program over two and one-half months late.

Second, Duke's application will not permit residential customers who switch to a supplier of generation other than Duke to participate in the REC program.⁶ This provision is contrary to Duke's commitment in the Stipulation to make net metering, interconnection and the REC purchase program information available to "a consumer considering the installation of renewable energy generation at the consumer's site."⁷ Nowhere in the Stipulation did it limit—as Duke has done—the customers who would be

⁵ ESP Stipulation at 37, ¶31.

⁶ Application at 1 and Exhibit 1 at 5.

⁷ Stipulation at 37.

eligible for the REC purchase program to non-shopping customers. FirstEnergy's program allows all customers to participate⁸ and so should Duke's.

In summary, the Duke REC purchase program should be available to all of Duke customers, not just Duke's generation customers. With the proposed program Duke's shopping customers are worse off than all other customers in the state because other utilities, such as the FirstEnergy Companies are purchasing RECs from their shopping customers. Actually, the law allows Duke to purchase in-state RECs from customers in any service territory who are neither generation nor distribution customers to meet its benchmarks. Duke's proposal to refuse to purchase RECs from shopping customers will have an anticompetitive effect because if Duke's customers sign on to a 15 year REC contract with Duke, the customers will not shop for an extended period of time.

- B. The Commission should require Duke to sign 15-year purchase contracts with residential customers participating in the Duke program to better ensure that Duke will meet its renewable benchmark requirements.**

R.C. 4928.02(J) identifies another state policy applicable to the residential REC program:

Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates.

Also, R.C. 4928.02(K) directs the Commission to require effective REC purchase programs in order to:

⁸ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Residential Renewable Energy Credit Purchase Program Agreement*, Case No. 09-551-EL-UNC, Application for Approval of Residential Renewable Energy Credit Purchase Program Agreement (June 30, 2009) at 2, ¶ 3. Approved, Finding and Order (September 23, 2009).

Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering.

In order to develop a meaningful, effective REC purchase program Duke must commit to purchase RECs from the customers for at least 15 years. The environmental mandates Duke must meet under R.C. 4928.64(B) extend out for 16 years:

By 2025 and thereafter, an electric distribution utility shall provide from alternative energy resources, including, at its discretion, alternative energy resources obtained pursuant to an electricity supply contract a portion of the electricity supply required for its standard service offer under section 4928.141 of the Revised Code * * * That portion shall equal twenty-five per cent of the total number of kilowatt hours of electricity sold by the subject utility or company to any and all retail electric consumers whose electric load centers are served by that utility and are located within the utility's certified territory.

The "Residential Renewable Energy Credit Purchase Offer Agreement"⁹ ("Purchase Agreement") indicates that the Company agrees to purchase RECs from a Customer's Project for a period of fifteen years.¹⁰ Yet in the application the Company states:

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.¹¹

The two provisions cited above are inconsistent. The contracts should extend for fifteen years as stated in the Purchase Agreement to give the residential customers sufficient financial support to install the solar panels.¹² Moreover, Duke should be

⁹ Exhibit 1 of the Application.

¹⁰ Id. at 4.

¹¹ Application at 2, ¶2.

¹² Under the FirstEnergy REC program the program exists for only three years but FirstEnergy commits to continue to pay for the RECs it begins to purchase during those three years for a total of 15 years.

willing to extend its payments to participants for at least the 16 years that Duke knows it will have to increase its renewable output under R.C. 4928.64(B). The Commission should require the utilities to commit to such purchases because of the state policy specified under R.C. 4928.02(J). FirstEnergy's REC program extends its contracts with residential REC customers for 15 years.¹³

Additionally, if Duke is not willing to commit to a 15 year purchase agreement, which is necessary for residential customers to obtain a loan to purchase and install the renewable equipment, then Duke should not ever seek waivers for failing to meet its renewable benchmarks since it has rejected an opportunity to do so. In fact, if Duke is unwilling to commit to purchase solar RECs for a period of at least 15 years, the Commission should not relieve Duke from meeting Duke's benchmarks as it is permitted to do under R.C. 4928.64(C)(4)(a)-(c). An electric utility, such as Duke, that will not commit to buying RECs from residential consumers for 15 years, cannot reasonably argue that "renewable energy or solar energy resources are not reasonably available to permit the electric distribution utility or electric service company to comply, during the period of review, with the subject minimum benchmark[s]."¹⁴

III. CONCLUSION

The Commission should order Duke to revise its REC purchase program to be like FirstEnergy's REC purchase program so that Duke's customers will have the opportunity to have a revenue stream to offset the cost of a solar installation.

¹³ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Residential Renewable Energy Credit Purchase Program Agreement*, Case No. 09-551-EL-UNC, Amended Application for Approval of the Amended Residential Renewable Energy Credit Purchase Program Agreement (July 28, 2009) at 2, ¶5.

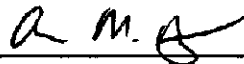
¹⁴ R.C. 4928.64(C)(4)(c).

Additionally, non-participant customers should not have to pay the costs of a REC purchase program through Rider FPP that is ineffective.

Specifically, the REC purchase program should be available to all residential customers; Duke should extend its agreement to customers it contracts with during the ESP period for 15 years. Additionally, the Commission should not grant Duke a waiver under R.C. 4928.64(C)(4)(a)-(c) from its renewable benchmark requirements as long as it insists upon relying on an ineffective REC purchase program.

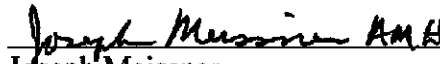
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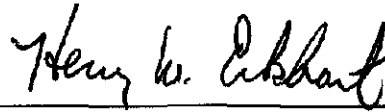


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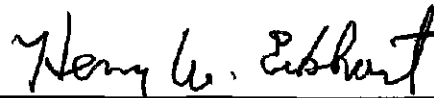
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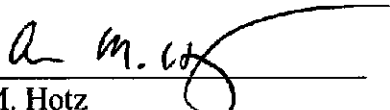
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CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Comments* was served on the persons stated below, via First Class U.S. Mail, postage prepaid, this 8th day of October, 2009.



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