

FILE

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-REN
Credit Purchase Program Agreement and)
Tariff.)

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**MOTION FOR RULING ON AND REVISION OF DUKE ENERGY OHIO, INC'S
APPLICATION FOR APPROVAL OF A RESIDENTIAL SOLAR RENEWABLE
ENERGY CREDIT PURCHASE PROGRAM**

**BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
THE NATURAL RESOURCES DEFENSE COUNCIL**

The Office of the Ohio Consumers' Counsel ("OCC") on behalf of the approximately 612,000 residential utility consumers of Duke Energy ("Duke" or "the Company"), and Natural Resources Defense Council moves the Public Utilities' Commission of Ohio ("PUCO" or "Commission") to rule on the Duke Energy Ohio, Inc.'s ("Duke" or "Company") proposed residential solar renewable energy credit ("REC") purchase program. Under the electric security plan ("ESP") stipulation ("Stipulation"),¹ the Company agreed to include a residential REC program in its REC tariff by June 2009.² Nothing has been filed since October 8, 2009 and the Commission has not yet ruled on the program.

The program Duke filed failed in two significant ways. First, the program is anticompetitive and in conflict with the Stipulation Duke signed in that it does not permit

¹ *In the Matter of the application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO et. al., Stipulation and Recommendation (October 27, 2008).

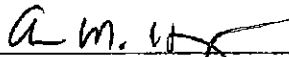
² *Id.* at 37, ¶31.

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shopping customers to participate. Second, the program will not work to achieve its intended goal which is to provide an economic incentive to customers to defray some of the overall investment costs in renewable energy. Therefore, OCC also requests that the Commission require Duke to revise its residential REC program that is consistent with the law and that will actually work to encourage participation by the residential consumers in its service territory who must pay for the program. Using either the already approved FE REC program or the AEP proposal (with the changes outlined in OCC's Motion to Intervene and Comments) would be acceptable to accomplish the objectives for which OCC negotiated in the ESP case. Given Duke's unwillingness to provide a lawful and reasonably workable renewable energy credit program, the Commission should also order Duke to file the new program within one week of the date of its ruling in this matter. Finally, in order not to penalize the public for Duke's failure to comply with the terms of the Stipulation, Duke should be required to extend the program for three years from the date of the Commission's approval of its revised program. The reasons for granting OCC's Motions are spelled out in greater detail in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Ann M. Hotz, Counsel of Record

Jeffrey L. Small

Michael E. Idzkowski

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

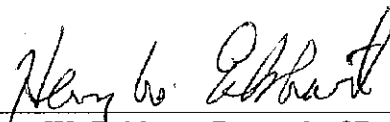
Columbus, Ohio 43215-3485

(614) 466-8574 (Telephone)

hotz@occ.state.oh.us

small@occ.state.oh.us

idzkowski@occ.state.oh.us



Henry W. Eckhart, Counsel of Record

The Natural Resources Defense Council

50 West Broad Street, Suite 2117

Columbus, Ohio 43215

henryeckhart@aol.com

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission should quickly move to rule on Duke's residential REC program because it is currently six months past the time Duke indicated it would provide a residential REC program and there has been no activity in the docket for three months. In addition, the Commission should require the Company to revise the program because the program as designed will be ineffective and wasteful.

Further, it does not provide sufficient incentives for participation and will not produce results. The Commission should require Duke to provide an effective program so as to be accountable to the customers from whom they will be seeking recovery for the program.

The Commission should extend the eligibility requirements of the program to include shopping customers and provide meaningful incentives to participants in order to make it more effective. This includes making the term of the REC contract with customers extend for 15 years to provide customers with a stream of revenue to help them cover the cost of their investment. Such revisions are necessary so that Duke will be accountable to the customers that must pay for the REC program and so that Duke will be better able to meet its renewable compliance requirements under R.C. 4928.64. The

Commission should require Duke to allow shopping customers to participate in Duke's REC program. Additionally, the Commission should require Duke to make an upfront payment to customers who participate in the program or the Commission should require Duke to make payments over a period of the life of the solar project the participant has implemented in order to give residential customers sufficient incentives to participate, as mentioned above.

II. THE COMMISSION SHOULD RULE QUICKLY ON DUKE'S APPLICATION BECAUSE THE TARIFF IS OVERDUE BY SIX MONTHS.

Under the ESP Stipulation,³ the Company agreed to include a residential REC program in its REC tariff by June 2009.⁴ But Duke did not file its application for approval until September 21, 2009 and filed an amended application on October 8, 2009. On the same day, OCEA filed comments requesting the Commission to revise the program to make the program more effective, especially since Duke will recover all of the program's costs from customers. In addition, Duke must meet significant renewable benchmarks - including for solar - throughout the next 15 years under R.C. 4928.64(B)(2) and the residential REC purchasing program is one way in which Duke can meet those requirements under R.C. 4928.65.

Nothing has been filed in the docket in the last three months and the Commission has not yet ruled on the program. Because the residential REC program is already overdue by more than 6 months, the Commission should move quickly to rule on the

³ *In the Matter of the application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO et. al., Stipulation and Recommendation (October 27, 2008).

⁴ Id. at 37, ¶31.

application. Moreover, the residential REC program was one of the items the parties agreed to as part of Duke's three-year ESP, which will expire in less than two years. The Commission should therefore order that the revised program be effective for a three year period following its approval. Otherwise, the ESP signatory parties will receive significantly less than what they bargained for which is not fair, just or reasonable.

III. 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

Accordingly, under the Stipulation Duke has a responsibility to make information available to **all** consumers on the REC purchase program and to allow all consumers to participate.

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 information about 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 eligible for the REC purchase

⁵ ESP Stipulation at 37, ¶31.

⁶ Application at 1 and Exhibit 1 at 5.

⁷ Stipulation at 37.

program to non-shopping customers.

The FirstEnergy Corp.'s⁸ programs, approved by the Commission, allows all customers to participate. The Commission should also require Duke's program to allow all customers to participate, especially because the Duke ESP Stipulation requires Duke to make the residential REC program available to all consumers.

Additionally, the program that Duke has designed is unlawful and inconsistent with several state policies articulated under S.B. 221. R.C. 4928.02(F) states that it is the policy of the state to do the following through this state:

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.

If Duke is unwilling to allow shopping customers to participate in its residential REC purchasing program, it is unwilling to facilitate those customers' marketing and delivering of the electricity that they produce. This provision of the program actually interferes with the state policy expressed in R.C. 4928.02(F).

IV. THE COMMISSION SHOULD REQUIRE DUKE TO MAKE AN UPFRONT PAYMENT AND A 15 YEAR CONTRACT TO RESIDENTIAL CUSTOMERS TO GIVE AN EFFECTIVE INCENTIVE TO RESIDENTIAL CUSTOMERS IN ORDER TO MEET THE STATE GOALS IDENTIFIED UNDER R.C. 4928.02(J) AND (K).

In order to develop a meaningful, effective REC purchase program Duke must commit to purchase RECs from the customers up front and for a period of at least 15

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).

years as provided for in the AEP companies' proposed residential REC program.⁹ This is an important incentive for customers to participate because implementing a solar project for an individual residential customer is much more risky than for a business. Yet, the residential customers should be encouraged to implement solar projects because there is an urgent social need to develop all available renewable generation sources in order to reduce society's dependence on the nonrenewable fuels as recognized under R.C.

4928.02(J):

It is the policy of this state to do the following throughout this state:

(J) Provide coherent, transparent means of giving **appropriate incentives** to technologies that can adapt successfully to potential environmental mandates. (Emphasis added.)

Additionally, residential customers should be given an upfront payment for their significant risk of implementing individual residential solar residential programs in order to develop distributed generation sources. The General Assembly also promoted distributed generation resources to reduce society's dependence on constrained transmission resources under R.C. 4928.02(K):

It is the policy of this state to do the following throughout this state:

(K) 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. (Emphasis added.)

Moreover, the Commission should require Duke to provide the same incentive to residential customers in its residential REC program that the AEP companies' are proposing in anticipation of the annual report it must submit to the general assembly

⁹ *In the Matter of the Application of Ohio Power Company for Approval of its Renewable Energy Credit Purchase Offer Program*, Case No. 09-1871-EL-ACP, et al, Application at 3 (a) and (t).Exh. 1, ¶6. (November 30, 2009).

under R.C. 4928.64(D)(1):

The commission annually shall submit to the general assembly in accordance with section 101.68 of the Revised Code a report describing the compliance of electric distribution utilities and electric services companies with division (B) of this section any strategy for utility and company compliance or for encouraging the use of alternative energy resources in supplying this state's electricity needs in a manner that considers available technology, costs, job creation, and economic impacts. The commission shall allow and consider public comments on the report prior to its submission to the general assembly. Nothing in the report shall be binding on any person, including any utility or company for the purpose of its compliance with any benchmark under division (B) of this section, or the enforcement of that provision under division (C) of this section.

A residential REC program that gives meaningful incentives to residential customers to participate through less risky payments as proposed by the AEP companies is one of the best ways to encourage "the use of alternative energy resources in supplying this state's electricity needs in a manner that considers available technology, costs, job creation and economic impacts." A robust response to Duke's residential REC program is necessary to increase the use of alternative energy resources in the Duke service territory, to develop the market for solar power in the Duke service territory, and to increase employment in the Duke service territory. Few residential customers will respond to the program Duke proposes because it provides no meaningful incentive for them to incur the substantial expense. Accordingly, the Commission should revise Duke's program to better encourage participation as intended under S.B. 221.

V. CONCLUSION

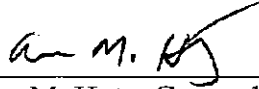
In the ESP process, OCC negotiated in good faith with the objective of having a reasonable, workable and certainly lawful REC program put in place. Instead of complying with what ought to have been an easy assignment for a company that touts its

ideological support for renewable energy, this has turned into a battle marked by delay and unwillingness to fulfill the obligations of the settlement. When OCC entered into the settlement, OCC assumed that the resulting REC agreement would be lawful and workable. These were reasonable expectations that Duke failed to meet. Duke should not be rewarded for its actions and customers should not be penalized. The Commission should rule on Duke's residential REC program quickly because it is six months overdue and nothing new has been filed in the docket for three months. Moreover the program was intended to extend for at least two and one half years of the ESP period and there are only two years remaining.

The Commission should require Duke to allow all residential customers, including shopping customers, to participate in the residential REC program as is the case in the FirstEnergy companies' program, approved by the Commission. Additionally, the Commission should require Duke to pay customers incentives up front, as proposed in the AEP companies' residential REC program or at least to execute a 15 year contract as permitted under the FirstEnergy companies' residential REC program. These revisions to the Duke residential REC program will provide for an effective program that will better address the state's need for renewable energy resources and distributed generation as stated under R.C. 4928.02(J) and (K).

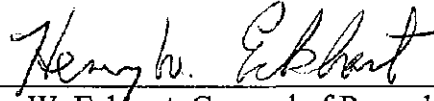
Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Ann M. Hotz, Counsel of Record
Jeffrey L. Small
Michael E. Idzkowski
Assistant Consumers' Counsel

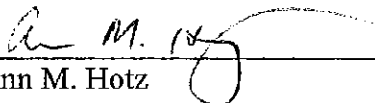
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
hotz@occ.state.oh.us
small@occ.state.oh.us
idzkowski@occ.state.oh.us



Henry W. Eckhart, Counsel of Record
The Natural Resources Defense Council
50 West Broad Street, Suite 2117
Columbus, Ohio 43215
henryeckhart@aol.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion for Ruling on and Revision of Duke Energy Ohio, Inc's Application for Approval of a Residential Solar Renewable Energy Credit Purchase Program by the Office of the Ohio Consumers' Counsel, and the Natural Resources Defense Council*, was served on the persons stated below, via First Class U.S. Mail, postage prepaid, this 15th day of January, 2010.


Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

Rocco O. D'Ascenzo, Esq.
Elizabeth H. Watts, Esq.
Duke Energy Ohio, Inc.
139 Fourth Street, Room 25 ATII
Cincinnati, OH 45202
elizabeth.watts@duke-energy.com
rocco.d'ascenzo@duke-energy.com

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@bklawfirm.com
mikurtz@bklawfirm.com
Attorneys for Ohio Energy Group

Thomas J. O'Brien
Sally W. Bloomfield
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com
sbloomfield@bricker.com

Attorneys for City of Cincinnati

Thomas McNamee
William Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, OH 43215
thomas.mcnamee@puc.state.oh.us
william.wright@puc.state.oh.us

Dave Rinebolt
Colleen Mooney
Ohio Partners for Affordable Energy
231 W. Lima Street, P.O. 1793
Findlay, OH 45839-1793
drinebolt@aol.com
cmooney@columbus.rr.com

Attorneys for Ohio Partners for Affordable Energy

Sam Randazzo
Lisa McAlister
McNees, Wallace & Nurick LLC
21 E. State Street, 17th Fl.
Columbus, OH 43215
srandazzo@mwncmh.com
lmcalister@mwncmh.com

Barth Royer, Esq.
Bell & Royer Co. LPA
33 S. Grant Ave.
Columbus, OH 43215-3927
barthroyer@aol.com

*Attorney for the Ohio Environmental
Council*

M. Howard Petricoff, Esq.
Stephen M. Howard, Esq.
Vorys, Sater, Seymour And Pease LLP
52 East Gay S., P. O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

*Attorneys for Constellation NewEnergy,
Inc. and Constellation Energy
Commodities Group, Inc.*

Noel M. Morgan, Esq.
Counsel for Communities United
for Action
215 East Ninth Street, Suite 500
Cincinnati, OH 45202
nmorgan@lascinti.org

Gary A. Jeffries, Esq.
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburg, PA 15212-5817
gary.a.jeffries@dom.com

Douglas E. Hart, Esq.
Greater Cincinnati Health Council
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasshart.com

John Bentine, Esq.
Mark Yurick, Esq.
Chester, Willcox & Saxbe LLP
65 E. State Street, Suite 1000
Columbus, OH 43215-4213
jbentine@cwsllaw.com
myurick@cwsllaw.com

Attorneys for the Kroger Company, Inc.

Cynthia A. Fonner, Esq.
Senior Counsel
Constellation Energy Group, Inc.
550 W. Washington St., Suite 300
Chicago, IL 60661
cynthia.a.fonner@constellation.com

*Attorneys for Constellation NewEnergy,
Inc. and Constellation Energy
Commodities Group, Inc.*

Nolan Moser, Esq.
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
nmoser@theOEC.org

Bobby Singh, Esq.
Integrays Energy Services, Inc.
300 West Wilson Bridge Road, Suite 350
Worthington, OH 43085
bsingh@integraysenergy.com

Robert P. Malloy, Esq.
Village of Terrace Park Wood & Lamping
600 Vine Street, Suite 2500
Cincinnati, OH 45202
rpmallow@woodlamping.com

Langdon D. Bell, Esq.
Bell & Royer Company, LPA
33 South Grant Avenue
Columbus, OH 43215-3927
Lbell33@aol.com

*Attorney for Ohio Manufacturer's
Association*

Larry Gearhardt, Esq.
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218-2383
lgearhardt@ofbf.org

Mary W. Christensen, Esq.
Christensen, Christensen, Donchatz
Kettlewell & Owens, LLC
100 East Campus View Blvd., Suite 360
Columbus, OH 43235
mchristensen@columbuslaw.org

*Attorney for People Working
Cooperatively, Inc.*

Terrance O'Donnell, Esq.
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215-4236
todonnell@bricker.com

*Attorney for American Wind Energy
Association, Ohio Advanced Energy*

Craig G. Goodman, Esq.
National Energy Marketers Association
3333 K. Street, NW, Suite 110
Washington, DC 20007
cgoodman@energymarketers.com

Douglas M. Mancino, Esq.
McDermott Will & Emery, LLP
2049 Century Park East, Suite 3800
Los Angeles, CA 90067-3218
dmancion@mwe.com

*Attorney for Morgan Stanley Capital
Group, Inc.*